THE

REVISED STATUTES

OF THE

STATE OF INDIANA,

PASSED AT THE

THIRTY-SIXTH SESSION OF THE GENERAL ASSEMBLY;

ALSO, SUNDRY ACTS, ORDINANCES, AND PUBLIC DOCUMENTS DIRECTED TO BE PRINTED ALONG WITH THE SAID STATUTES:

TO WHICH ARE PREFIXED THE

CONSTITUTION OF THE UNITED STATES

AND OF THE STATE OF INDIANA.

VOLUME I.

PRINTED AND PUBLISHED ACCORDING TO LAW.

INDIANAPOLIS:
J. P. CHAPMAN, STATE PRINTER.
1852.

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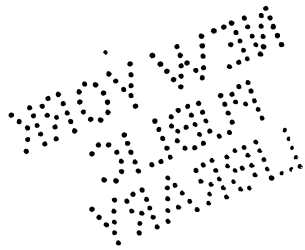

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CERTIFICATE AND ERRATA.

OFFICE OF SECRETARY OF STATE,
INDIANAPOLIS, 29th October, 1852.

I, CHARLES H. TEST, Secretary of State, do hereby certify that the Statutes, and the Constitution of the State of Indiana, contained in this volume have been examined and compared with, and are found to be correctly printed from, the enrolled Statutes, and Constitution on file in my office, with the exception of the words included [thus] inserted to aid the sense, and the following errata:

Page 121. 17th line, the word "be" before the word "respectively," should be stricken out.

" 166. Sec. 2, 2d line, the word "on" before the word "certificate," should read "or."

" 305. Sec. 2, 2d line, the word "at" before the words "any game," should read "as."

" 327. Sec. 21, 10th line, the word "recovered" should read "received."

" 336. Sec. 33, 1st line, the word "in" should read "on."

" 351. 2d specification, 1st line, before the words "General Assembly," the word "the" should be inserted.

" 352. Sec. 3, 1st line, the word "purchaser" should read "purchase."

" 365. Sec. 2, 6th line, after the word "lieutenant," the word "colonel" should have been inserted.

" 375. Sec. 2, 2d line, the word "give" should be inserted before the word "notice."

" 442. Sec. 21, 1st line, the word "the" should be inserted before the word "voters."

" 446. Sec. 53, 6th line, the word "indorse" should read "indorsed."

CHARLES H. TEST, *Secretary of State.*

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THE DECLARATION

OF

INDEPENDENCE.

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

Propriety of the declaration.

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station, to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Unalienable rights of the people, &c.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness: that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

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Prudence, indeed will dictate that governments long established, should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

Recitation of injuries.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturali-

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zation of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences.

Usurpations on the part of the British crown.

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

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He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

Petitions for redress unavailing.

In every stage of these oppressions we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Appeal to the British people fruitless, &c.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace, friends.

Declaration.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connexion

The colonies absolved from their allegiance

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between them and the State of Great Britain is, and ought to be, totally dissolved; and that as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. and for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor. Mutual pledge of fidelity.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

JOHN HANCOCK.

NEW HAMPSHIRE.
Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.
Samuel Adams,
John Adams,
Robert Treat Payne,
Elbridge Gerry.

RHODE ISLAND, &c.
Stephen Hopkins,
William Ellery.

CONNECTICUT.
Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW YORK.
William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.
Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.
Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.
Cæsar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.
Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

VIRGINIA.
George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.
William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.
Edward Rutledge,
Thomas Hayward, Jr.,
Thomas Lynch, Jr.,
Arthur Middleton.

GEORGIA.
Button Gwinnett,
Lyman Hall,
George Walton.

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ARTICLES OF CONFEDERATION.

In Congress, July 9, 1778.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION

Between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE 1.

The style of this confederacy shall be, "*The United States of America.*"

ARTICLE 2.

Each State retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

ARTICLE 3.

The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

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ARTICLE 4.

SECTION 1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; *provided*, that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; *provided*, *also*, that no impositions, duties or restriction, shall be laid by any State on the property of the United States, or either of them.

SEC. 2. If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

SEC. 3. Full faith and credit shall be given in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ARTICLE 5.

SECTION 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

SEC. 2. No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United

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States for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Sec. 3. Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of these States.

Sec. 4. In determining questions in the United States in Congress assembled, each State shall have one vote.

Sec. 5. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE 6.

Section 1. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty, with any king, prince, or State, nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of Nobility.

Sec. 2. No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

Sec. 3. No state shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

Sec. 4. No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade: nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to

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garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

SEC. 5. No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or State, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE 7.

When land forces are raised by any State for the common defense, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE 8.

All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements there-

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on shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

ARTICLE 9.

SECTION 1. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article, of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures; *provided*, that no member of Congress shall be appointed a judge of any of the said courts.

SEC. 2. The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to con-

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stitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned; *provided*, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." *Provided, also*, that no State shall be deprived of territory for the benefit of the United States.

Sec. 3. All controversies concerning the private right of soil claimed under different grants of two or more States whose jurisdiction, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the

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United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

SEC. 4. The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States: *Provided*, that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations:

SEC. 5. The United States in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "*A Committee of the States*," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; *provided*, that no person be allowed to serve in the office of President more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and

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thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

SEC. 6. The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

SEC. 7. The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on

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any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ARTICLE 10.

The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time think expedient to vest them with; *provided*, that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ARTICLE 11.

Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE 12.

All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE 13.

Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United

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States, and be afterwards confirmed by the legislatures of every State.

AND WHEREAS, It hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of and to authorize us to ratify the said articles of confederation and perpetual union,

Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent, and that the union shall be perpetual. In witness, whereof, we have hereunto set our hands in Congress.

Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord 1778, *and in the third year of the Independence of America.*

On the part and behalf of the State of New Hampshire.—Josiah Bartlett, John Wentworth, Jun. (August 8, 1778.)

On the part and behalf of the State of Massachusetts Bay.—John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten.

On the part and behalf of the State of Rhode Island and Providence Plantations.—William Ellery, Henry Marchant, John Collins.

On the part and behalf of the State of Connecticut.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams.

On the part and in behalf of the State of New York.—James Duane, Francis Lewis, William Duer, Gouv. Morris.

On the part and behalf of the State of New Jersey.—John Witherspoon, Nath. Scudder, (November 26, 1778.)

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On the part and behalf of the State of Pennsylvania.—Robert Morris, Daniel Roberdeau, Jona. Bayard Smith, William Clingan, Joseph Reed, (July 22, 1778.)

On the part and behalf of the State of Delaware.—Thomas M'Kean, (February 12, 1779,) John Dickinson, (May 5, 1779,) Nicholas Van Dyke.

On the part and behalf of the State of Maryland.—John Hanson, (March 1, 1781,) Daniel Carroll, (March 1, 1781.)

On the part and behalf of the State of Virginia.—Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

On the part and behalf of the State of North Carolina.—John Penn, (July 21, 1778,) Corns. Harnett, Jno. Williams.

On the part and behalf of the State of South Carolina.—Henry Laurens, William Henry Drayton, Jno. Mathews, Richard Hutson, Thos. Heyward, Jun.

On the part and behalf of the State of Georgia.—Jno. Walton, (July 24, 1778,) Edwd. Telfair, Edward Langworthy.

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THE CONSTITUTION

OF

THE UNITED STATES.

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Preamble.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION FOR THE UNITED STATES OF AMERICA.

ARTICLE I.

Legislative powers, in whom vested.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

House of Representatives, how and by whom chosen.

SECT. 2. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of a Representative.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven

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years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand; but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Representatives and direct taxes, how apportioned.

Census.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies to be filled.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Power of choosing officers, and of impeachment.

SECT. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Senators, how and by whom chosen.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof

How classified.

State executive to make temporary appointments, in case, &c.

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may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

Qualifications of a Senator.

No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of the Senate, his right to vote.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

President pro tem. and other officers of Senate, how chosen

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

Power to try impeachments

The senate shall have the sole power to try all impeachments: when sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

When President is tried, chief justice to preside.

Sentence.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Times, &c., of holding elections, how prescribed.

SEC. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

One session in each year.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Membership.

SECT. 5. Each house shall be the jndge of the elections, returns and qualifications of its own members, and a majority

Quorum.

of each shall constitute a quorum to do business; but a

Adjournments.

smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

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Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. Rules. Power to punish or expel.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secresy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal. Journa

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. Time of journment limited, unless, &c.

SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Compensation. Privileges.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office. Disqualification in certain cases.

SECT. 7. All bills for raising revenue, shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills. House to originate all revenue bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by Veto. Bill may be passed by two-thirds of each house, notwithstanding, &c

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which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons, voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law.

Bill not returned in ten days.

Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Provision as to all orders, &c., except, &c.

SECT. 8. The congress shall have power:—To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defense and general welfare, of the United States; but all duties, imposts and excises shall be uniform throughout the United States:—To borrow money on the credit of the United States:—To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:—To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:—To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:—To provide for the punishment of counterfeiting the securities and current coin of the United States:—To establish post offices and post roads:—To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:—To constitute tribunals inferior to the supreme court:—To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations:—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:—To

Powers of Congress.

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raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:—To provide and maintain a navy:—To make rules for the government and regulation of the land and naval forces:—To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:—To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress:—To exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings: and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Provision as to migration or importation of certain persons.

SECT. 9. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas corpus.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Bills of attainder, &c.

No bill of attainder, or *ex post facto* law, shall be passed.

Taxes, how apportioned.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration, herein before directed to be taken.

No export duty.

No tax or duty shall be laid on articles exported from any state.

No commercial preferences.

No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of

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another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money drawn from treasury, unless, &c.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No titular nobility.

Officers, not to receive presents, unless, &c.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

States prohibited from the exercise of certain powers.

SECT. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law imparing the obligation of contracts; or grant any title of nobility. No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports, or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

President and Vice President, their term of office.

SECT. 1. The executive power shall be vested in a PRESIDENT of the United States of America. He shall hold his office during the term of four years; and, together with the vice president, chosen for the same term, be elected as follows:

Electors of President and Vice President, number, and how appointed.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives, to which the state may be entitled in the congress: But no senator or

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representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves: and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed: And if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose the president: but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.]

Amendment XII. a substitute for this paragraph.

The congress may determine the time for choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Electors to vote on same day.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications of President.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the

On whom his duties devolve in case of his removal, death &c.

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vice president; and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

President's compensation.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

His oath.

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

President to be commander-in-chief.

SECT. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States.

He may require opinion of, &c., and may pardon.

He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Treaty making power.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur;

Nomination of certain officers.

and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

When President may fill vacancies.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

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SECT. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

President shall communicate to Congress.

He may convene and adjourn Congress, in case, &c.

Shall receive ambassadors; execute laws, and commission officers.

SECT. 4. The president, vice president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

All civil offices forfeited for certain crimes.

ARTICLE III.

SECT. 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Judicial power.

Tenure.

Compensation.

SECT. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.

Judicial power, to what cases it extends.

See amendment XI.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the

Original jurisdiction of supreme court.

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Appellate. other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Trial by jury, except, &c. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state

Trial, where. where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Treason defined SECT. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their

Proof of. enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Punishment of. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Each State to give credit to the public acts, &c., of every other. SECT. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state: and the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Privileges of citizens of each State. SECT. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from justice to be delivered up. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Persons held to service, having escaped, to be delivered up. No person held to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

Admission of new States. SECT. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected

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within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Power of Congress over territory and other property.

The congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

Republican form of government guaranteed. Each State to be protected.

SECT. 4. The United States shall guaranty to every state in this Union a republican form of government; and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

Constitution, how amended

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as a part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Proviso.

ARTICLE VI.

Certain debts, &c. adopted.

All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

Supremacy of constitution, treaties and laws of the U States.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges

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in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to support constitution, by whom taken.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

No religious test.

ARTICLE VII.

What ratification shall establish constitution.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON, PRESIDENT, and Deputy from Virginia.

New Hampshire.—John Langdon, Nicholas Gilman.

Massachusetts.—Nathaniel Gorham, Rufus King.

Connecticut.—William Samuel Johnson, Roger Sherman.

New York.—Alexander Hamilton.

New Jersey.—William Livingston, David Brearley, William Paterson, Jonathan Dayton.

Pennsylvania.—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

Delaware.—George Read, Gunning Bedford, Jun., John Dickinson, Richard Bassett, Jacob Broom.

Maryland.—James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll.

Virginia.—John Blair, James Madison, Jun.

North Carolina.—William Blount, Richard Dobbs Spaight, Hugh Williamson.

South Carolina.—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

Georgia.—William Few, Abraham Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

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AMENDMENTS TO THE CONSTITUTION.

ARTICLES

In addition to, and amendment of, the constitution of the United States, ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

Religious establishment prohibited. Freedom of speech, of the press, and right to petition.

I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Right to keep and bear arms.

II. A well regulated militia being necessary to the security of a free state, the right of the people, to keep and bear arms shall not be infringed.

No soldier to be quartered in any house, unless, &c.

III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Right of search and seizure regulated.

IV. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Provisions concerning prosecutions, trial and punishment

V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of

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life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Private property not to be taken for public use, without, &c.

Further provisions respecting criminal prosecutions.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district, wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Right of trial by jury secured.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.

Excessive bail or fines and cruel punishments prohibited.

VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Rule of construction.

IX. The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Same subject.

X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Same subject.

XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Manner of choosing President and Vice President.

XII. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists

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of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president; but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice; and if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March then next following, then the vice president shall act as president, as in case of the death or other constitutional disability of the president.

Same subject.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice president; a quorum for that purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Same subject.

But no person, constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

DECISIONS OF COURTS TOUCHING THE CONSTITUTION OF THE UNITED STATES.

The constitution was established by the people, and not by sovereign States. It is to be reasonably construed, and its words are to be taken in their natural and obvious sense.

The judicial power of the U. S. is expressed in general terms, and may therefore be exercised under any variety of form. No part of the criminal

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jurisdiction of the U. S. can be delegated to State tribunals. State tribunals are bound by the laws of the U. S.—1 Wheaton, 304; 3 Cond. Rep., 575.

The power of naturalization is exclusively in Congress.—2 Wheaton, 259; 4 Cond. Rep., 111.

If there be no act of Congress providing a uniform system of bankruptcy, a State court may pass a bankrupt law, not impairing the obligation of contracts.—4 Wheaton, 122; 4 Cond. Rep. 409.

The States have no authority to control proceedings in the U. S. courts.—10 Wheaton, 1; 6 Cond. Rep., 1.

All powers not delegated to the Federal Government are reserved in the States.—11 Peters, 257.

The States are bound to provide laws for holding elections in certain cases, and these Congress may revise.—1 Wheaton, 304; 3 Cond. Rep., 575.

A State may be sued in the U. S. court.—5 Peters, 1. *Cherokee Nation* vs. *State of Georgia.*

Congress may give priority to any debts due the U. S.—2 Cranch, 258; 1 Cond. Rep., 421.

All means, not prohibited by the constitution, appropriate to carrying out any law of Congress itself constitutional, may be legitimately employed.—4 Wheaton, 316; 4 Cond. Rep., 466.

The constitution went into operation on the first Wednesday in March, 1789. It does not, therefore, operate upon rights acquired under State laws before that day.—5 Wheaton, 420; 4 Cond. Rep., 714.

The regulation of navigation is included in the power to regulate commerce.—9 Wheaton, 1; 5 Cond. Rep., 562.

State legislatures may exercise judicial functions.—2 Peters, 413.

The phrase *ex post facto* in the constitution, refers only to penal and criminal laws.—8 Peters, 83; 2 Gallis. C. C. Rep., 138.

State governments have no right to interfere with the power of the U. S. to borrow money.—2 Peters, 449.

An alleged error in the decision of a State court in collision with a prior decision of the same court, may be shown, notwithstanding the constitution provides that full faith is to be given in one State to the judicial proceedings of another.—14 Peters, 49.

As to the interpretation of the constitution of the U. S., see 16 Peters, 539.

The legislatures of the States cannot annul the decisions of the U. S. courts.—5 Cranch, 115; 2 Cond. Rep., 202.

The 2d sec. of the 4th article of the constitution does not refer to a slave voluntarily carried away by his master into another State, and there left under the protection of a law declaring him free; but to slaves escaping from one State into another.—1 Washington C. C. Rep., 499.

State legislatures may give corporate rights to all sects for the management of their property.—9 Cranch, 43; 3 Cond. Rep., 254.

State legislatures may pass recording acts requiring deeds to be recorded within a limited time. So they may pass limitation laws. If, however, these laws are so unreasonable as to amount to a denial of justice, the Supreme Court will interfere.—3 Peters, 259.

The word "emit" does not apply to contracts made by a State for services rendered or money actually borrowed for present use; but applies only to those bills which are intended to be circulated as money.—4 Peters, 431.

It is contrary to the constitution to divest a citizen of his right, and vest it in another, without full compensation; but the legislature cannot determine the amount of the compensation. Every act of a legislature repugnant to the constitution is void.—2 Dall., 304.

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The presumption must always be in favor of the validity of laws.—4 Dall., 14; 1 Cond. Rep., 211.

One legislature may repeal a law passed by another; but an act done under a law of one cannot be undone by a subsequent legislature.—1 Cranch, 87; 2 Cond. Rep., 308.

A law annulling conveyances is unconstitutional.—Ibid.

As to the power of Congress to incorporate a bank, see 4 Wheaton, 316; 4 Cond. Rep., 466.

There is nothing in the constitution forbidding Congress to pass laws violating the obligation of contracts, though that power is denied the States.—Peters C. C. Rep., 322.

Where a law of Congress and a State law are in conflict, the former must prevail.—5 Wheaton, 1; 4 Cond. Rep., 589.

An act making the notes of a bank a tender, is unconstitutional.—11 Peters, 257.

States have the right to tax monied corporations. The right may be relinquished. Its relinquishment is not to be presumed unless the deliberate purpose so to do is manifest.—4 Peters, 514.

The constitution of Mississippi adopted in 1832, prohibited the introduction of slaves into that State as merchandize, from and after the 1st day of May, 1833. A contract for the purchase of negroes introduced into the State in 1835 was not invalidated, because the legislature passed no law to carry into effect that article of the constitution till 1837.—15 Peters, 449.

Valuation and appraisement laws cannot operate upon contracts made before their passage.—7 Peters, 28. 2 Howard, 608.

A State insolvent law, so far as it respects debts subsequently contracted, is not void.—9 Wheaton, 207; 5 Cond. Rep., 562.

A State may regulate and abolish imprisonment for debt.—12 Wheaton, 370; 6 Cond. Rep., 535.

An act of a State legislature requiring a license to import and vend foreign goods, and providing penalties for a violation of it is unconstitutional.—12 Wheaton, 419; 6 Cond. Rep., 557.

A State insolvent law which not only liberates the person, but discharges the debt, whether that debt was created before or after the passage of the law, is void.—4 Wheaton, 209; 4 Cond. Rep., 424. 6 Wheaton, 131; 5 Cond Rep., 35. 3 Mason's C. C. R., 88. 1 Gallis. C. C. R., 441.

A provision in the act of incorporation giving summary process to a bank, is no part of its franchises, and may be repealed by the legislature.—4 Wheaton, 235; 4 Cond. Rep., 439.

A State may pass naturalization laws, not in contravention of the laws of Congress.—2 Dall., 294.

A resolution of a State legislature setting aside a decree, and granting a new trial, is not unconstitutional.—3 Dall., 386; 1 Cond. Rep., 172.

An act of a State Legislature declaring that certain lands should not be taxed, could not be rescinded by a subsequent act.—7 Cranch, 164; 2 Cond. Rep., 457. 16 Peters, 28.

Congress may levy a tax on carriages.—3 Dall., 171; 1 Cond. Rep., 83.

Congress may lay an embargo for an indefinite length of time.—2 Hall's Am. Law Jour., 255.

Congress may levy taxes as well in the District of Columbia, as in the several States and Territories.—5 Wheaton, 317; 4 Cond. Rep., 660.

An act allowing tenants pay for improvements of real property made before the passage of the act, is so far void.—1 Gallis. C. C. R., 105.

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As to the power of a State to authorize the construction of a dam across a stream, see 3 Peters, 251.

A tax by a State on stock for loans made to the U. S., is unconstitutional.—2 Peters, 449.

The occupant claimant law of Ohio, providing for the appointment of commissioners to assess damages, is void—the right of trial by jury being secured in all suits at common law, when the value in controversy exceeds $20.—2 Peters, 523.

Certificates issued under an act of the legislature of Missouri, making them receivable for taxes, &c., were bills of credit, and the act is void.—4 Peters, 531. See also upon same subject, 11 Peters, 557.

A tax upon an office cannot be constitutionally levied.—16 Peters, 435.

A carriage conveying the mail on the Cumberland road is exempt from toll though the road is ceded away. Passengers and private property in the carriages are not exempt.—3 Howard, 151. See also 3 Howard, 720.

A deed for real property sold under an execution, but not appraised as required by an act of the legislature of Indiana, is not void.—3 Howard, 707.

As to the questions of boundary between the States, see 5 Wheaton, 374; 4 Cond. Rep., 691. 11 Peters, 185; 12 Peters, 657; 14 Peters, 210; 15 Peters, 234.

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CONSTITUTION

OF THE

STATE OF INDIANA.

ART. 1. Of bill of rights.
2. Of suffrage and election.
3. Of distribution of powers.
4. Of Legislative.
5. Of the Executive.
6. Of administrative.
7. Of judicial.
8. Of education.
9. Of State institutions.
10. Of finance.
11. Of corporations.
12. Of militia.
13. Of negroes and mulattoes.
14. Of boundaries.
15. Of miscellaneous.
16. Of amendments.

ARTICLE I.

BILL OF RIGHTS.

SECTION
1. Natural rights.—Power inherent in the people.
2. Right to worship.
3. Free enjoyment of religious opinions.
4. No preference to a particular religion.
5. No religious test for office.
6. No money to be drawn for a theological institution.
7. Witness not incompetent on account of his religion.
8. Mode of administering an oath.
9. Right to speak, write or print freely.
10. Prosecutions for libel.
11. Security against unreasonable search.
12. Courts to be open, and justice to be administered without purchase, denial or delay.
13. Right to trial by jury in criminal prosecutions, and rules for conducting the same.
14. Not twice for same offense, nor to testify against himself.
15. Unnecessary rigor prohibited.
16. Excessive bail and fines, and cruel punishment prohibited.
17. All offenses, except murder and treason, bailable.
18. Vindictive justice prohibited.
19. Jury judges of law and fact.
20. Trial by jury inviolate.
21. Compensation for services and property.
22. Reasonable amount of property exempt from sale.—No imprisonment for debt.
23. Privileges to be equal among all citizens.
24. *Ex post facto*, or laws impairing contracts, prohibited.
25. The taking effect of a law not to depend upon any authority, except as herein provided.
26. Operation of laws not to be suspended.
27. *Habeas corpus* not to be suspended.
28. Treason defined.
29. Confession, or testimony of two witnesses required in case of treason.
30. Conviction not to corrupt blood, or forfeit estates.
31. Right of the people to assemble, instruct and petition.
32. Right to bear arms.
33. Military subordinate to civil power.
34. Soldiers not to be quartered, &c.
35. No title of nobility.
36. Emigration.

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SECTION
37. No involuntary servitude, except for crime.—Indenture of a negro made out of the State.

ARTICLE II.

SUFFRAGE AND ELECTION.

SECTION
1. Elections free.
2. Qualifications of an elector.
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4. Residence not lost by absence on business, &c.
5. Negro or mulatto not to vote.
6. Bribery in elections prohibited.
7. Challenges to fight a duel to disqualify for office.
8. Infamous crime may disqualify for office.
9. Two lucrative offices not to be held by the same person, militia and certain deputy postmasters excepted.—Certain counties may elect the same person clerk, recorder and auditor.
10. Defaulters not eligible.
11. *Pro tempore* appointments not part of a regular term.
12. Electors free from arrest.
13. Elections by ballot and *viva voce*.
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2. Number of Senators and Representatives, and how chosen.
3. Term of office of Senators and Representatives.
4. An enumeration to be made every sixth year.
5. Number of Senators and Representatives to be fixed by law.
6. Districts, how composed.
7. Qualifications of a Senator or Representative.
8. Privileged from arrest, not subject to civil process, nor to be questioned for any debate.
9. Sessions of the General Assembly, when held, and the duration thereof.
10. Powers of each House.—How long may adjourn.
11. Two-thirds of each House to constitute a quorum.
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13. Doors to be open.
14. May punish disorderly members.
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16. Powers of each House.
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24. General law for suing the State may be passed.
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3. Election of Governor and Lieut. Gov.
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7. Qualifications.
8. Who cannot be Governor or Lieutenant Governor.
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10. Vacancy, how filled.
11. President of the Senate, *pro tem.*
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13. Messages.
14. Bills to be presented to the Governor, who shall sign, or veto them.
15. Governor may require information of certain officers, &c.
16. Shall execute laws.
17. Governor shall have power to grant reprieves, pardons, &c.—Power to suspend sentence.—Power to remit fines. Advisory council provided for.
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19. Writs of election.
20. Legislature—where to meet.
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SECTION
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4. Qualifications of a county officer.
5. Officers of State reside and keep records at the seat of government.
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8. County officers, how impeached.
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8. Circuit courts.
9. Judges, how elected.
10. Judge of one circuit may hold court in another.
11. Prosecuting attorney.
12. May be removed from office.
13. Compensation.
14. Justices of the peace.
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16. Judicial officer not eligible, &c.
17. General Assembly may modify or abolish grand jury system.
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19. Courts of conciliation.
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2. Common school fund.
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5. Re-investment.
6. Counties liable for the fund.
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7. Bills redeemable in specie.
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9. Interest.
10. To cease operations within 20 years.
11. Trust fund may be invested in a bank with branches.
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2. Governor's aids.
3. Commissions and term of office.
4. Division of the militia.
5. Sedentary and active.
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ARTICLE XIII.

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4. Oath of office.
5. Seal of State.
6. Commissions.
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Fifth. Governor to continue to act.

Sixth. First session of the General Assembly.

Seventh. Senators and Representatives to hold over.

Eighth. First general election.

Ninth. First election for Governor, &c.

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Eleventh. Oath to support this Constitution.

Twelfth. Vacancies, how filled.

Thirteenth. 13th article to be submitted for adoption, to the people.

Fourteenth. Constitution to be submitted generally.

Fifteenth. New county to be formed out of Perry and Spencer counties.

Sixteenth. Clarksville.

PREAMBLE.

Preamble.

TO THE END, that justice be established, public order maintained, and liberty perpetuated; WE the People of the State of Indiana, grateful to ALMIGHTY GOD for the free exercise of the right to choose our own form of government, do ordain this Constitution.

ARTICLE I.

BILL OF RIGHTS.

Natural rights. Power inherent in the people.

SECTION 1. WE DECLARE, That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the People; and that all free governments are, and of right ought to be, founded on their authority, and instituted for

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their peace, safety, and well being. For the advancement of these ends, the People have, at all times, an indefeasible right to alter and reform their government.

Right to worship.

SEC. 2. All men shall be secured in their natural right to worship Almighty God, according to the dictates of their own consciences.

Free enjoyment of religious opinions.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

No preference to a particular religion.

SEC. 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.

No religious test for office.

SEC. 5. No religious test shall be required, as a qualification for any office of trust or profit.

No money to be drawn for a theological institution.

SEC. 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

Witness not incompetent on account of his religion.

SEC. 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

Mode of administering an oath.

SEC. 8. The mode of administering an oath or affirmation, shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

Right to speak, write or print freely.

SEC. 9. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible.

Prosecutions for libel.

SEC. 10. In all prosecutions for libel, the truth of the matters alleged to be libellous may be given in justification.

Security against unreasonable search.

SEC. 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

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Courts to be open, and justice to be administered without purchase, denial or delay.

SEC. 12. All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

Right to trial by jury in criminal prosecutions, and rules for conducting the same.

SEC. 13. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

Not twice for same offense, nor to testify against himself.

SEC. 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

Unnecessary rigor prohibited

SEC. 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

Excessive bail and fines, and cruel punishments prohibited.

SEC. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

All offenses, except murder and treason, bailable.

SEC. 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

Vindictive justice prohibited.

SEC. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.

Jury judges of law and fact.

SEC. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

Trial by jury inviolate.

SEC. 20. In all civil cases, the right of trial by jury shall remain inviolate.

Compensation for services and property.

SEC. 21. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

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Reasonable amount of property exempt from sale.

SEC. 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.

No imprisonment for debt.

Privileges to be equal among all citizens.

SEC. 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Ex post facto, or laws impairing contracts, prohibited.

SEC. 24. No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

The taking effect of a law not to depend upon any authority, except as herein provided.

SEC. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution.

Operation of laws not to be suspended.

SEC. 26. The operation of the laws shall never be suspended, except by the authority of the General Assembly.

Habeas corpus not to be suspended.

SEC. 27. The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion; and then, only if the public safety demand it.

Treason defined

SEC. 28. Treason against the State shall consist only in levying war against it, and in giving aid and comfort to its enemies.

Confession, or testimony of two witnesses required in case of treason.

SEC. 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

Conviction not to corrupt blood or forfeit estates.

SEC. 30. No conviction shall work corruption of blood, or forfeiture of estate.

Right of the people to assemble, instruct and petition.

SEC. 31. No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

Right to bear arms.

SEC. 32. The people shall have a right to bear arms, for the defense of themselves and the State.

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Military subordinate to civil power.

SEC. 33. The military shall be kept in strict subordination to the civil power.

Soldiers not to be quartered, &c.

SEC. 34. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, but in a manner to be prescribed by law.

No title of nobility.

SEC. 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

Emigration.

SEC. 36. Emigration from the State shall not be prohibited.

No involuntary servitude, except for crime.

SEC. 37. There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the bounds of the State, shall be valid within the State.

Indenture of a negro made out of the State.

ARTICLE II.

SUFFRAGE AND ELECTION.

Elections free.

SECTION 1. All elections shall be free and equal.

Qualifications of an elector.

SEC. 2. In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election; and every white male, of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside.

A soldier, seaman or marine not a citizen, nor entitled to vote.

SEC. 3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine have the right to vote.

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Residence not lost by absence on business, &c.

SEC. 4. No person shall be deemed to have lost his residence in the State by reason of his absence, either on business of this State or of the United States.

Negro or mulatto not to vote.

SEC. 5. No Negro or Mulatto shall have the right of suffrage.

Bribery in elections prohibited

SEC. 6. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward, to procure his election.

Challenges to fight a duel to disqualify for office.

SEC. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

Infamous crime may disqualify for office.

SEC. 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

Two lucrative offices not to be held by the same person, militia and certain deputy postmasters excepted.

SEC. 9. No person holding a lucrative office or appointment, under the United States, or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, that officers in the militia, to which there is attached no annual salary, and the office of Deputy Postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: *And provided, also*, that counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person.

Certain counties may elect the same person clerk, recorder and auditor.

Defaulters not eligible.

SEC. 10. No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit, until he shall have accounted for, and paid over, according to law, all sums for which he may be liable.

Pro tempore appointments not part of a regular term.

SEC. 11. In all cases in which it is provided than an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

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Electors free from arrest.

SEC. 12. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest, in going to elections, during their attendance there, and in returning from the same.

Elections by ballot and *viva voce*.

SEC. 13. All elections by the people shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

Day of elections

SEC. 14. All general elections shall be held on the second Tuesday in October.

ARTICLE III.

DISTRIBUTION OF POWERS.

Three departments of government.

SECTION 1. The powers of the Government are divided into three separate departments; the Legislative, the Executive, including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

ARTICLE IV.

LEGISLATIVE.

Legislative authority, how vested.

SECTION 1. The Legislative authority of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana;" and no law shall be enacted, except by bill.

Style of a law.

Number of Senators and Representatives, and how chosen

SEC. 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts, into which the State may, from time to time, be divided.

Term of office of Senators and Representatives

SEC. 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: *Provided, however*, that the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the

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seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable.

An enumeration to be made every sixth year.

SEC. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every six years thereafter, cause an enumeration to be made of all the white male inhabitants over the age of twenty-one years.

Number of Senators and Representatives to be fixed by law.

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of white male inhabitants, above twenty-one years of age, in each: *Provided*, that the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution.

Districts, how composed.

SEC. 6. A Senatorial or Representative district, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

Qualifications of a Senator or Representative.

SEC. 7. No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

Privileged from arrest, not subject to civil process, nor to be questioned for any debate.

SEC. 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest, during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process, during the session of the General Assembly, nor during the fifteen days next before

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the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

Sessions of the General Assembly, where held, and the duration thereof.

SEC. 9. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time, by proclamation, call a special session.

Powers of each House. How long may adjourn.

SEC. 10. Each House, when assembled, shall choose its own officers, (the President of the Senate excepted,) judge the elections, qualifications, and returns of its own members, determine its rules of proceeding, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.

Two-thirds of each House to constitute a quorum.

SEC. 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to-day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing, shall be entitled to no compensation, from the end of the said five days, until an organization shall have been effected.

To keep a journal, and cause to be entered yeas and nays.

SEC. 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal: *Provided*, that on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

Doors to be open.

SEC. 13. The doors of each House, and of committees of the Whole, shall be kept open, except in such cases, as, in the opinion of either House, may require secrecy.

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May punish disorderly members.

SEC. 14. Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

Contempt, how punished.

SEC. 15. Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior, in its presence; but such imprisonment shall not, at any time exceed twenty-four hours.

Powers of each House.

SEC. 16. Each House shall have all powers necessary for a branch of the legislative department of a free and independent State.

Where bills may originate.

SEC. 17. Bills may originate in either House, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the House of Representatives.

The reading of, call of yeas and nays on, and the passage of bills.

SEC. 18. Every bill shall be read, by sections, on three several days, in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

The subject matter and title of an act.

SEC. 19. Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

To be plainly worded.

SEC. 20. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

Act to be amended, shall be set forth.

SEC. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

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Local laws prohibited, except in the cases enumerated.

SEC. 22. The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on, highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys, and public squares;

Summoning and empanneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township, or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries;

In relation to interest on money;

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

Laws shall be general

SEC. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

General law for suing the State may be passed.

SEC. 24. Provision may be made, by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensa-

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tion to any person claiming damages against the State, shall ever be passed.

Bills to receive the vote of a majority, and be signed by the presiding officers.

SEC. 25. A majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed, shall be signed by the presiding officers of the respective Houses.

Protest.

SEC. 26. Any member of either House shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the journal.

A statute to be a public law.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

Publication of the laws.

SEC. 28. No act shall take effect, until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body of the law.

Compensation of members.

SEC. 29. The members of the General Assembly shall receive for their services, a compensation, to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

Duration of session.

Senators and Representatives not eligible to certain offices.

SEC. 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people.

ARTICLE V.

EXECUTIVE.

Executive power vested in a Governor.

SECTION 1. The executive power of the State shall be vested in a Governor. He shall hold his office during four

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years, and shall not be eligible more than four years in any period of eight years.

Lieutenant Governor.

SEC. 2. There shall be a Lieutenant Governor, who shall hold his office during four years.

Election of Governor and Lieut. Gov.

SEC. 3. The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the General Assembly.

Manner of voting, and returns thereof.

SEC. 4. In voting for Governor and Lieutenant Governor the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor and Lieutenant Governor, shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

Highest number to elect.

SEC. 5. The person, respectively, having the highest number of votes for Governor and Lieutenant Governor, shall be elected; but in case two or more persons shall have an equal, and the highest, number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant, as the case may be.

Contests.

SEC. 6. Contested elections for Governor or Lieutenant Governor, shall be determined by the General Assembly, in such manner as may be prescribed by law.

Qualifications.

SEC. 7. No person shall be eligible to the office of Governor or Lieutenant Governor, who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices, who shall not have attained the age of thirty years.

Who cannot be Governor or Lieut. Gov.

SEC. 8. No member of Congress, or person holding any office under the United States, or under this State, shall fill the office of Governor or Lieutenant Governor.

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Term, when to commence.

SEC. 9. The official term of the Governor and Lieutenant Governor, shall commence on the second Monday of January, in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.

Vacancy, how filled.

SEC. 10. In case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the Lieutenant Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the Governor and Lieutenant Governor, declaring what officer shall then act as Governor; and such officer shall act accordingly, until the disability be removed, or a Governor be elected.

President of the Senate, *pro tem*

SEC. 11. Whenever the Lieutenant Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as president for the occasion.

The Governor commander-in-chief of the militia.

SEC. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces, to execute the laws, or to suppress insurrection, or to repel invasion.

Messages.

SEC. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

Bills to be presented to the Governor, who shall sign, or veto them.

SEC. 14. Every bill which shall have passed the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated; which House shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House, shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law, without his signa-

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ture, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State; who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor, within two days next previous to the final adjournment of the General Assembly.

Governor may require information of officers, &c.

SEC. 15. The Governor shall transact all necessary business with the officers of government, and may require information, in writing, from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

Shall execute laws.

SEC. 16. He shall take care that the laws be faithfully executed.

Governor shall have power to grant reprieves, pardons, &c.

SEC. 17. He shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses, except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction

To suspend sentence.

for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the General Assembly, at its next meeting; when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further re-

To remit fines

prieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several

Advisory council provided for.

amounts remitted: *Provided however*, that the General Assembly may, by law, constitute a council, to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

Vacancies in certain offices, how filled during recess.

SEC. 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when, at any

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time, a vacancy shall have occurred in any other State office, or in the office of judge of any court; the Governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

Writs of election.

SEC. 19. He shall issue writs of election, to fill such vacancies as may have occurred in the General Assembly.

Legislature, where to meet.

SEC. 20. Should the seat of government become dangerous from disease, or a common enemy, he may convene the General Assembly at any other place.

Lieut. Governor, his duties and privileges.

SEC. 21. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects; and, whenever the Senate shall be equally divided, he shall give the casting vote.

Compensation of Governor.

SEC. 22. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

Compensation of Lieut. Gov.

SEC. 23. The Lieutenant Governor, while he shall act as President of the Senate, shall receive, for his services, the same compensation as the Speaker of the House of Representatives; and any person acting as Governor, shall receive the compensation attached to the office of Governor.

Not eligible to any other office during same term.

SEC. 24. Neither the Governor nor Lieutenant Governor shall be eligible to any other office, during the term for which he shall have been elected.

ARTICLE VI.

ADMINISTRATIVE.

Secretary, Treasurer and Auditor of State, how chosen.

SECTION 1. There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall, severally, hold their offices for two years. They shall perform such duties, as may be enjoined by law; and no person shall be eligible to either of said offices, more than four years in any period of six years.

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County officers, how chosen, and terms of office.

SEC. 2. There shall be elected, in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor. The clerk, auditor, and recorder, shall continue in office four years; and no person shall be eligible to the office of clerk, recorder, or Auditor, more than eight years, in any period of twelve years. The treasurer, sheriff, coroner, and surveyor, shall continue in office two years; and no person shall be eligible to the office of treasurer or sheriff more than four years in any period of six years.

Other county and township officers.

SEC. 3. Such other county and township officers as may be necessary, shall be elected, or appointed, in such manner as may be prescribed by law.

Qualifications of a county officer.

SEC. 4. No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof during one year next preceding his appointment, if the county shall have been so long organized, but if the county shall not have been so long organized, then within the limits of the county or counties, out of which the same shall have been taken.

Officers of State to reside and keep public records at the seat of government.

SEC. 5. The Governor, and the Secretary, Auditor, and Treasurer of State, shall, severally, reside and keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.

County and township officers, residence of.

SEC. 6. All county, township, and town officers, shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law.

State officers, how impeached.

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

County officers, how impeached.

SEC. 8. All State, county, township, and town officers, may be impeached, or removed from office, in such manner as may be prescribed by law.

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Vacancies, how filled.

SEC. 9. Vacancies in county, township, and town offices shall be filled in such manner as may be prescribed by law.

County boards may have administrative powers.

SEC. 10. The General Assembly may confer upon the Boards doing county business in the several counties, powers of a local, administrative character.

ARTICLE VII.

JUDICIAL.

Judicial power, where vested.

SECTION 1. The Judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, and in such inferior Courts as the General Assembly may establish.

Supreme Court, number of judges of.

SEC. 2. The Supreme Court shall consist of not less than three, nor more than five Jndges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

Districts, judges to reside therein.

SEC. 3. The State shall be divided into as many districts as there are judges of the supreme court; and such districts shall be formed of contiguous territory, as nearly equal in population, as, without dividing a county, the same can be made. One of said judges shall be elected from each district, and reside therein; but said judge shall be elected by the electors of the State at large.

Jurisdiction.

SEC. 4. The supreme court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

Decisions to be in writing.

SEC. 5. The supreme court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the court thereon.

Publication of the decisions.

SEC. 6. The General Assembly shall provide, by law, for the speedy publication of the decisions of the supreme court, made under this Constitution; but no judge shall be allowed to report such decisions.

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Clerk of Supreme Court.

SEC. 7. There shall be elected by the voters of the State, a clerk of the supreme court, who shall hold his office four years, and whose duties shall be prescribed by law.

Circuit Courts.

SEC. 8. The circuit courts shall each consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law.

Judges, how elected.

SEC. 9. The State shall from time to time, be divided into judicial circuits; and a judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

Judge of one circuit may hold court in another.

SEC. 10. The General Assembly may provide by law, that the judge of one circuit may hold the courts of another circuit, in cases of necessity or convenience; and, in case of temporary inability of any judge, from sickness or other cause, to hold the courts in his circuit, provision may be made, by law, for holding such courts.

Prosecuting attorney.

SEC. 11. There shall be elected, in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for two years.

May be removed from office.

SEC. 12. Any judge or prosecuting attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the supreme court, or in such other manner as may be prescribed by law.

Compensation.

SEC. 13. The judges of the supreme court and circuit courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

Justices of the peace.

SEC. 14. A competent number of justices of the peace shall be elected, by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

Conservators of the peace.

SEC. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

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Judicial officer not eligible, &c.

SEC. 16. No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office.

Grand jury system, modified or abolished.

SEC. 17. The General Assembly may modify, or abolish, the grand jury system.

Name and style of criminal prosecutions.

SEC. 18. All criminal prosecutions shall be carried on in the name, and by the authority of the State; and the style of all process shall be: "The State of Indiana."

Courts of conciliation.

SEC. 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other courts of justice; but such tribunals or other courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or court.

Commissioners to simplify the pleading and practice of courts.

SEC. 20. The General Assembly, at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, simplify, and abridge the rules, practice, pleadings, and forms of the courts of justice. And they shall provide for abolishing the distinct forms of action at law, now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said commissioners to reduce into a systematic code, the general statute law of the State; and said commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to abridgment and amendment, as to said commissioners may seem necessary or proper. Provision shall be made, by law, for filling vacancies, regulating the tenure of office and the compensation of said commissioners.

Who may practice law.

SEC. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.

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ARTICLE VIII.

EDUCATION.

Uniform system of common schools.

SECTION 1. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

Common school fund.

SEC. 2. The common school fund shall consist of the congressional township fund, and the lands belonging thereto;

The surplus revenue fund;

The saline fund and the lands belonging thereto;

The bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the Swamp Lands, granted to the State of Indiana by the act of Congress of the 28th of September, 1850, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes.

Principal of fund to be perpetual.

SEC. 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

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Investment and distribution.

SEC. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.

Re-investment.

SEC. 5. If any county shall fail to demand its proportion of such interest, for Common School purposes, the same shall be re-invested for the benefit of such county.

Counties liable for the fund.

SEC. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

Trust funds to remain inviolate.

SEC. 7. All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

Superintendent of public instruction.

SEC. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction; who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

ARTICLE IX.

STATE INSTITUTIONS.

Benevolent institutions.

SECTION 1. It shall be the duty of the General Assembly to provide, by law, for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and also, for the treatment of the Insane.

Houses of refuge.

SEC. 2. The General Assembly shall provide Houses of Refuge, for the correction and reformation of juvenile offenders.

Poor-farms.

SEC. 3. The county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

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ARTICLE X.

FINANCE.

Assessment and taxation.

SECTION 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

Public debt.

SEC. 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the Treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than Bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the Public Debt.

Treasury.

SEC. 3. No money shall be drawn from the Treasury, but in pursuance of appropriations made by law.

Receipts and expenditures to be published.

SEC. 4. An accurate statement of the receipts and expenditures of the public money, shall be published with the laws of each regular session of the General Assembly.

No debt to be created.

SEC. 5. No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: to meet casual deficits in the revenue; to pay the interest on the State Debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense.

Counties not to subscribe for stock, &c.

SEC. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town, or township, nor of any corporation whatever.

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ARTICLE XI.

CORPORATIONS.

No bank to be established, &c.

SECTION 1. The General Assembly shall not have power to establish, or incorporate, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

General banking law.

SEC. 2. No banks shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

General banking.

SEC. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

Bank with branches.

SEC. 4. The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.

Branches mutually responsible

SEC. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.

Stockholders individually responsible.

SEC. 6. The stockholders in every bank, or banking company, shall be individually responsible, to an amount over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

Bills redeemable in specie.

SEC. 7. All bills or notes issued as money, shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.

Holders entitled to preference.

SEC. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

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Interest.

SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed, by law, to individuals loaning money.

To cease operations within twenty years.

SEC. 10. Every bank, or banking company, shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter to close its business.

Trust funds may be invested in a bank with branches.

SEC. 11. The General Assembly is not prohibited from investing the Trust Funds in a bank with branches; but, in case of such investment, the safety of the same shall be guarantied by unquestionable security.

State not to be a stockholder, nor to loan its credit.

SEC. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association.

Corporations to be created by general law.

SEC. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

Individual liability of corporators.

SEC. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.

ARTICLE XII.

MILITIA.

Militia, of whom to consist.

SECTION 1. The militia shall consist of all able-bodied white male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped, and trained, in such manner as may be provided by law.

Governor's aids

SEC. 2. The Governor shall appoint the Adjutant, Quartermaster, and Commissary Generals.

Commissions, and term of office.

SEC. 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

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Division of the militia.

SEC. 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battallions and companies, and fix the rank of all staff officers.

Sedentary and active.

SEC. 5. The militia may be divided into classes of sedentary and active militia, in such manner as shall be prescribed by law.

Persons conscientiously opposed to bearing arms.

SEC. 6. No person conscientiously opposed to bearing arms, shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

ARTICLE XIII.

NEGROES AND MULATTOES.

Immigration of negroes prohibited.

SECTION 1. No Negro or Mulatto shall come into, or settle in, the State, after the adoption of this Constitution.

Contracts with them to be void.

SEC. 2. All contracts made with any Negro or Mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person, who shall employ such Negro or Mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

Fines to be appropriated to colonization.

SEC. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such Negroes and Mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

SEC. 4. The General Assembly shall pass laws to carry out the provisions of this article.

ARTICLE XIV.

BOUNDARIES.

Boundaries of the State.

SECTION 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded, on the east, by the meridian line which forms the western boundary of the

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State of Ohio; on the south, by the Ohio river, from the mouth of the Great Miami River to the mouth of the Wabash River; on the west, by a line drawn along the middle of the Wabash River, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the north-western shore of said Wabash River; and, thence, by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

Jurisdiction of the State.

SEC. 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio River, and with the State of Illinois on the Wabash River, so far as said rivers form the common boundary between this State and said States respectively.

ARTICLE XV.

MISCELLANEOUS.

Certain officers, how appointed.

SECTION 1. All officers, whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.

Duration of office.

SEC. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.

Term to continue till a successor is elected and qualified.

SEC. 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

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SEC. 4. Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation, to support the Constitution of this State, and of the United States, and also an oath of office. Oath of office.

SEC. 5. There shall be a Seal of State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana. Seal of State.

SEC. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed with the State Seal, and attested by the Secretary of State. Commissions.

SEC. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county, under that area, be further reduced. Area of a county.

SEC. 8. No lottery shall be authorized; nor shall the sale of lottery tickets be allowed. Lotteries.

SEC. 9. The following grounds, owned by the State in Indianapolis, namely: the State House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven, as lies north of the arm of the Central Canal, shall not be sold or leased. Certain grounds not to be sold.

SEC. 10. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground. Tippecanoe battle-ground.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution, may be proposed in either branch of the General Assembly; and, if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each Amendments to the constitution.

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House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Two or more amendments to be voted on separately.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments, which shall have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

SCHEDULE.

When to take effect.

This Constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty-one, and shall supersede the Constitution adopted in the year one thousand eight hundred and sixteen. That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

Laws to remain in force.

First. All laws now in force, and not inconsistent with this Constitution, shall remain in force, until they shall expire or be repealed.

Indictments, &c., to be governed by present laws.

Second. All indictments, prosecutions, suits, pleas, plaints, and other proceedings, pending in any of the Courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several Courts, in the same manner as is now provided by law.

Fines, penalties, forfeitures, and bonds to inure, &c.

Third. All fines, penalties, and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county, in the manner prescribed by law. All bonds executed to the State, or to any officer, in his official capacity, shall remain in force, and inure to the use of those concerned.

Municipal incorporations to continue.

Fourth. All acts of incorporation for municipal purposes shall continue in force under this Constitution, until such time as the General Assembly shall, in its discretion, modify or repeal the same.

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Fifth. The Governor, at the expiration of the present official term, shall continue to act, until his successor shall have been sworn into office. Governor to continue to act.

Sixth. There shall be a session of the General Assembly, commencing on the first Monday of December, in the year one thousand eight hundred and fifty-one. First session of the General Assembly.

Seventh. Senators now in office and holding over, under the existing Constitution, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the first general election under this Constitution. Senators and Representatives to hold over.

Eighth. The first general election under this Constitution, shall be held in the year one thousand eight hundred and fifty-two. First general election.

Ninth. The first election for Governor, Lieutenant Governor, Judges of the Supreme Court and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorney, Secretary, Auditor, and Treasurer of State, and State Superintendent of Public Instruction, under this Constitution, shall be held at the general election in the year one thousand eight hundred and fifty-two; and such of said officers as may be in office, when this Constitution shall go into effect, shall continue in their respective offices, until their successors shall have been elected and qualified. First election for Governor, &c.

Tenth. Every person elected by popular vote, and now in any office which is continued by this Constitution, and every person who shall be so elected to any such office before the taking effect of this Constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been, or may be, elected, shall expire: *Provided*, That no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed. Persons elected by popular vote to continue in office till their terms expire.

Eleventh. On the taking effect of this Constitution, all officers thereby continued in office, shall, before proceeding in the further discharge of their duties, take an oath, or affirmation, to support this Constitution. Oath to support this constitution.

Twelfth. All vacancies that may occur in existing offices, prior to the first general election under this Constitution, shall be filled in the manner now prescribed by law. Vacancies, how filled.

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13th article to be submitted for adoption to the people.

Thirteenth. At the time of submitting this Constitution to the electors for their approval or disapproval, the article numbered thirteen, in relation to Negroes and Mulattoes, shall be submitted as a distinct proposition, in the following form: "Exclusion and Colonization of Negroes and Mulattoes," "Aye" or "No." And if a majority of the votes cast shall be in favor of said article, then the same shall form a part of this Constitution; otherwise, it shall be void, and form no part thereof.

Constitution to be submitted generally.

Fourteenth. No Article or Section of this Constitution shall be submitted, as a distinct proposition, to a vote of the electors, otherwise than as herein provided.

New county to be formed out of Perry and Spencer counties.

Fifteenth. Whenever a portion of the citizens of the counties of Perry and Spencer shall deem it expedient to form, of the contiguous territory of said counties, a new county, it shall be the duty of those interested in the organization of such new county, to lay off the same by proper metes and bounds, of equal portions as nearly as practicable, not to exceed one-third of the territory of each of said counties. The proposal to create such new county shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election, shall be in favor of the organization of said new county, it shall be the duty of the General Assembly to organize the same, out of the territory thus designated.

Clarksville.

Sixteenth. The General Assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same; and the funds belonging to said town shall be applied according to the intention of the grantor.

Done in Convention, at Indianapolis, the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-one; and of the Independence of the United States, the seventy-fifth.

GEORGE WHITFIELD CARR,
President, and delegate from the county of Lawrence.

Attest: WM. H. ENGLISH,
Principal Secretary.

GEORGE L. SITES,
HERMAN G. BARKWELL,
ROBERT M. EVANS,
Assistant Secretaries.

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ACT OF VIRGINIA.

An Act to authorize the delegates of this State in Congress, to convey to the United States in Congress assembled, all the right of this Commonwealth to the territory north westward of the river Ohio.

[Passed December 20, 1783.]

Preamble.

1. Whereas, The Congress of the United States did, by their act of the sixth day of September, in the year one thousand seven hundred and eighty, recommend to the several States in the Union, having claims to waste and unappropriated lands in the western country, a liberal cession to the United States, of a portion of their respective claims for the common benefit of the Union:

2. And, whereas, this Commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty-one, yield to the Congress of the United States, for the benefit of the said States, all right, title, and claim, which the said Commonwealth had to the territory northwest of the river Ohio, subject to the conditions annexed to the said act of cession:

3. And, whereas, the United States, in Congress assembled, have, by their act of the thirteenth of September last, stipulated the terms on which they agree to accept the cession of this State, should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this Commonwealth, are conceived, on the whole, to approach so nearly to them, as to induce this State to accept thereof, in full confidence that Congress will, in justice to this State, for the liberal cession she hath made, earnestly press upon the other States, claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the Union:

Delegates empowered to convey.

Be it enacted by the General Assembly, That it shall and may be lawful for the delegates of this State to the Congress of the United States, or such of them as shall be assembled in Congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this State, by proper deed or instru-

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ment in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in Congress assembled, for the benefit of the said States, all right, title, and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country, within the limits of the Virginia charter, situate, lying, and being to the northwest of the river Ohio, subject to the terms and conditions contained in the before recited act of Congress of the thirteenth day of September last, that is to say: upon condition that the territory so ceded shall be laid out and formed into States, containing suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the States so formed shall be distinct republican States and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence, as the other States; that the necessary and reasonable expenses incurred by this State in subduing any British posts, or in maintaining forts or garrisons within and for the defense, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by Congress, one by this Commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State, which they shall judge to be comprised within the intent and meaning of the act of Congress of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties: that a quantity not exceeding one hundred and fifty thousand acres of land, promised by this State, shall be allowed and granted to the then Colonel, now General George Rogers Clark, and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskias and St. Vincents were reduced, and to the officers and soldiers that have been since incorporated into the said regiment, to be laid

Conditions.

Reservations.

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off in one tract, the length of which is not to exceed double the breadth, in such place on the northwest side of the Ohio as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia: that in case the quantity of good lands on the southeast side of the Ohio, upon the waters of Cumberland River, and between the Green River and Tennessee River, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia: that all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to, any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation, or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions, in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever: provided, that the trust hereby reposed in the delegates of this State shall not be executed, unless three of them, at least, are present in Congress.*

All the lands ceded to be a common fund for the members of the federal alliance and for no other use.

Three members at least to execute the trust.

*Agreeably to the above recited act, the territory therein alluded to, was, on the first day of March, 1784, transferred to the United States, by deed, signed by Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, then delegates in Congress from the Commonwealth of Virginia.—(*See vol.* 1, *page* 472, *U. S. Laws.*)

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ACT OF VIRGINIA.

An Act concerning the territory ceded by this Commonwealth to the United States.

[PASSED DECEMBER 30, 1788.]

Preamble.

1. WHEREAS, The United States in Congress assembled, did, on the seventh day of July, in the year of our Lord, one thousand seven hundred and eighty-six, state certain reasons, shewing that a division of the territory which hath been ceded to the said United States by this Commonwealth, into States, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower Congress to make such a division of the said territory into distinct and republican States, not more than five nor less than three in number, as the situation of that country and future circumstances might require: and the said United States in Congress assembled, have, in an ordinance for the government of the territory northwest of the river Ohio, passed on the thirteenth of July, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original States, and the people and States in the said territory, viz:

[Here the fifth article of compact of the ordinance of Congress of 13th July, 1787, is recited verbatim.]

And it is expedient that this commonwealth do assent to the proposed alteration so as to ratify and confirm the said article of compact between the original States, and the people and States in the said territory:

An article of the compact between the U. S. and the people and States N. W. of the Ohio, ratified by this Commonwealth.

2. *Be it therefore enacted by the General Assembly*, That the afore recited article of compact between the original States, and the people and the States in the territory northwest of the Ohio river, be, and the same is hereby ratified and confirmed, anything to the contrary, in the deed of cession of the said territory by this commonwealth to the United States, notwithstanding.

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SEVENTH SECTION

Of an act of the Commonwealth of Virginia, entitled "an act concerning the erection of the district of Kentucky into an independent State," (passed December 18th, 1789.)

(See Revised Laws of Virginia, 1st vol. page 59.)

SECTION 7. That the use and navigation of the river Ohio, so far as the territory of the proposed State, or the territory which shall remain within the limits of this Commonwealth lies therein, shall be free and common to the citizens of the United States; and the respective jurisdictions of this Commonwealth and of the proposed State, on the river as aforesaid, shall be concurrent only with the States which may possess the opposite shores of the said river.

ORDINANCE OF CONGRESS.

IN CONGRESS, JULY 13, 1787.

An ordinance for the government of the territory of the United States northwest of the river Ohio.

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Rules of inheritance, &c.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them: and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving, in all cases, to the widow

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of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force, until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses: provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Governor. *Be it ordained by the authority aforesaid*, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress: he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Secretary. There shall be appointed, from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months to the secretary of Congress: There shall also be appointed a court, to consist of three

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judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commission shall continue in force during good behavior.

Adoption and publication of laws.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time; which laws shall be in force in the district, until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Officers of militia.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Appointment of magistrates, &c.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall during the continuance of this temporary government, be appointed by the governor.

Civil divisions of the district.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships; subject, however, to such alterations as may thereafter be made by the legislature.

Right of representation; general assembly, &c.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or town-

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ships, to represent them in the general assembly: provided, that for every five hundred free male inhabitants, there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold, in his own right, in fee simple, two hundred acres of land within the same: provided, also, that a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or townsbip for which he was a member, to elect another in his stead, to serve for the residue of the term.

Constitution of the legislative power, &c.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to-wit:—As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid: and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall

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appoint and commission for the residue of the term: And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons qualified as aforesaid and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

Oath of fidelity and of office to be taken.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

Delegates to Congress.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States and permanent government therein, and for their admission to a share in the federal councils, on an equal footing with the original States, at as early periods as may be consistent with the general interest;

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States, and the people

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and States in the said territory, and forever remain unalterable, unless by common consent, to-wit:

Articles of compact, &c.

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall always be entitled to the benefit of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the

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articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory, not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same,* shall become fixed and established as follows, to-wit: The western State in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line.

(*See consent of Virginia, page 76.)

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The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

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ACT OF CONGRESS.

An Act to provide for the government of the territory northwest of the river Ohio.

[APPROVED AUGUST 7, 1789.]

WHEREAS, in order that the ordinance of the United States in Congress assembled, for the government of the territory northwest of the river Ohio, may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States:

SECT. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases in which, by the said ordinance, any information is to be given, or communication made, by the governor of the said territory, to the United States in Congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information, and to make such communication to the President of the United States; and the President shall nominate, and by and with the advice and consent of the Senate, shall appoint all officers, which, by the said ordinance, were to have been appointed by the United States in Congress assembled; and all officers, so appointed, shall be commissioned by him; and, in all cases where the United States in Congress assembled, might, by the said ordinance, revoke any commission or remove from any office, the President is hereby declared to have the same powers of revocation and removal.

Governor to make communication to the President of the United States.

President and Senate to appoint territorial officers.

President to commission:

And remove.

SECT. 2. *And be it further enacted,* That in case of the death, removal, resignation, or necessary absence of the governor of the said territory, the secretary thereof shall be, and he is hereby authorized and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said governor.

In case of death removal, &c., the secretary to execute the power of Governor during the vacancy.

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ACT OF CONGRESS.

An Act respecting the government of the territories of the United States northwest and south of the river Ohio.

[Approved May 8, 1792.]

Laws of the territory northwest of the river Ohio to be printed, &c.

Sect. 1. *Be it enacted, &c.*, That the laws of the territory northwest of the Ohio, that have been, or hereafter may be, enacted by the governor and judges thereof, shall be printed, under the direction of the Secretary of State,

200 copies, and 10 sets of the laws of the United States to be delivered, &c.

and two hundred copies thereof, together with ten sets of the laws of the United States, shall be delivered to the said governor and judges, to be distributed among the inhabitants, for their information, and that a like number of the laws of the United States shall be delivered to the governor and judges of the territory southwest of the river Ohio.

Governor and judges of the territory northwest of the Ohio authorized to repeal their laws, &c.

Sect. 2. That the governor and judges of the territory northwest of the river Ohio, shall be, and hereby are, authorized to repeal their laws by them made, whensoever the same may be found to be improper.

Official duties of secretaries, under the control of territorial laws.

Sect. 3. That the official duties of the secretaries of the said territories shall be under the control of such laws as are, or may be in force in the said territories.

One supreme or superior judge may hold court, in the absence of the others.

Sect. 4. That any one of the supreme or superior judges of the said territories, in the absence of the other judges, shall be, and hereby is authorized to hold a court.

The Secretary of State to provide seals for the territorial offices.

Sect. 5. That the Secretary of State provide proper seals for the several and respective public offices in the said territories.

The limitation act passed by the Governor, and judges disapproved.

Sect. 6. That the limitation act, passed by the governor and judges of the said territory, the twenty-eighth day of December, one thousand seven hundred and eighty-eight, be, and hereby is disapproved.

Sect. 7. That the expenses incurred by John Cleves Symmes and George Turner, two of the judges of the said territory, in sending an express, and in purchasing a boat to go the circuit, in the year one thousand seven hundred and ninety, shall be liquidated by the officers of the treasury, and paid out of the treasury of the United States.

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ACT OF CONGRESS.

An Act to divide the territory of the United States northwest of the Ohio into two separate governments

[APPROVED MAY 7, 1800.]

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the fourth day of July next, all that part of the territory of the United States north-west of the Ohio River, which lies westward of the line beginning at the Ohio, opposite to the mouth of Kentucky River, and running thence to Fort Recovery, and thence north, until it shall intersect the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called the Indiana territory.

The Indiana territory constituted, its boundaries, &c.

SECT. 2. *And be it further enacted*, That there shall be established within the said territory, a government, in all respects similar to that provided by the ordinance of Congress, passed on the 13th day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States north-west of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy, all and singular, the rights, privileges, and advantages granted and secured to the people by the said ordinance.

Government of Indiana territory the same as that established by ordinance of 13th July, 1787, &c.

SECT. 3. *And be it further enacted*, That the officers for the said territory, who, by virtue of this act, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the territory of the United States north-west of the river Ohio: And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor: provided, that the President of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of Congress.

Officers of the territory to be appointed by the President and Senate to perform the duties and receive the compensations, provided, &c., by ordinance and the laws, for similar officers in the N. W. territory, &c.

Proviso.

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So much of the ordinance, &c., as relates to the organization of the general assembly in the north-west territory, &c., to operate in the Indiana territory, &c.

SECT. 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States north-west of the Ohio river, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana territory, whenever satisfactory evidence shall be given to the governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: provided, that until there shall be five thousand free male inhabitants of twenty-one years and upwards, in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in said territory, agreeably to the number of free males, of the age of twenty-one years and upwards, which they may respectively contain.

Proviso.

Nothing in this act to affect the government in force in the north-west territory, except as to the Indiana territory, &c.

SECT. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the territory of the United States north-west of the Ohio river, further than to prohibit the exercise thereof within the Indiana territory, from and after the aforesaid fourth day of July next: provided, that whenever that part of the territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, running thence due north to the territorial line between the United States and Canada, shall be erected into an independent State, and admitted into the Union on an equal footing with the original States, thenceforth said line shall become and remain permanently the boundary line between such State and the Indiana territory; any thing in this act contained to the contrary notwithstanding.

Proviso.

Chilicothe the seat of government for the north-west territory, and St. Vincennes the seat of government for Indiana, &c.

SECT. 6. *And be it further enacted*, That until it shall be otherwise ordered by the legislatures of the said territories, respectively, Chilicothe, on the Scioto river, shall be the seat of the government of the territory of the United States north-west of the Ohio river; and that Saint Vincennes, on the Wabash river, shall be the seat of government for the Indiana territory.

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ACT OF CONGRESS.

An act for dividing the Indiana territory into two separate governments.

[Approved February 3, 1809.]

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the first day of March next, all that part of the Indiana territory which lies west of the Wabash river, and a direct line drawn from the said Wabash river and Post Vincennes due north, to the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called Illinois. Illinois territory formed.

Sect. 2. *And be it further enacted*, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States north-west of the river Ohio, and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory north-west of the river Ohio;" and the inhabitants thereof shall be entitled to, and enjoy all and singular, the rights, privileges, and advantages, granted and secured to the people of the territory of the United States, north-west of the river Ohio, by the said ordinance. Government thereof.

Sect. 3. *And be it further enacted*, That the officers for the said territory who, by virtue of this act, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall, respectively, exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana territory. And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor: provided, that the President of the United States shall have full power, in the recess of Congress, to Officers, how appointed. Proviso.

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appoint and commission all officers herein authorized, and their commissions shall continue in force until the end of the next session of Congress.

Organization of a general assembly.

SECT. 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States north-west of the river Ohio, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Illinois territory, whenever satisfactory evidence shall be given to the governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: provided, that, until there shall be five thousand free male inhabitants of twenty-one years and upwards in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in the said territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

Proviso.

Government of Indiana territory not affected.

SECT. 5. *And be it further enacted*, That nothing in this act contained, shall be construed so as, in any manner, to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the Illinois territory, from and after the aforesaid first day of March next.

Provision as to suits pending.

SECT. 6. *And be it further enacted*, That all suits, process, and proceedings, which, on the first day of March next, shall be pending in the court of any county which shall be included within the said territory of Illinois, and also all suits, process, and proceedings, which, on the said first day of March next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Illinois aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

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SECT. 7. *And be it further enacted*, That nothing in this act contained shall be so construed as to prevent the collection of taxes which may, on the first day of March next, be due to the Indiana territory on lands lying in the said territory of Illinois. Taxes to be still collected.

SECT. 8. *And be it further enacted*, That, until it shall be otherwise ordered by the legislature of the said Illinois territory, Kaskaskia, on the Mississippi river, shall be the seat of government for the said Illinois territory. Seat of government.

ACT OF CONGRESS.

An Act to enable the people of the Indiana territory to form a constitution and State government, and for the admission of such State into the Union on equal footing with the original States.

[APPROVED APRIL 19, 1816.]

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the inhabitants of the territory of Indiana be, and they are hereby authorized, to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever. Inhabitants authorized to form a constitution, &c.

SECT. 2. *And be it further enacted*, That the said State shall consist of all the territory included within the following boundaries, to-wit: Bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south, by the river Ohio, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the northwestern shore of the said river: and from thence, by a due north line, until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by the Boundaries of the State.

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said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio: provided, that the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory northwest of the river Ohio: provided, also, that the said States shall have concurrent jurisdiction on the river Wabash, with the State to be formed west thereof, so far as the said river shall form a common boundary to both.

Proviso.

Proviso.

Qualifications of electors.

SECT. 3. *And be it further enacted*, That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory at least one year previous to the day of election, and shall have paid a county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said territory, according to the apportionment made by the legislature thereof, at their last session, to-wit: From the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives; from the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark, five representatives; from the county of Harrison, five representatives; from the county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid, shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in the said territory; and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said territory regulating elections therein for members of the house of representatives.

Apportionment

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SECT. 4. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby authorized to meet at the seat of government of the said territory on the second Monday of June next; which convention when met, shall first determine, by a majority of the whole number elected, whether it be or be not expedient, at that time, to form a constitution and State government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and State government; or if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance; and shall then form, for the people of said territory, a constitution and State government: provided, that the same, whenever formed, shall be republican, and not repugnant to those articles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, which are declared to be irrevocable between the original States and the people and States of the territory northwest of the river Ohio; excepting so much of said articles as relates to the boundaries of the States therein to be formed.

Convention, time and place of meeting.

Its powers and duties.

Proviso.

SECT. 5. *And be it further enacted*, That until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States.

One representative in Congress.

SECT. 6. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

Propositions to the convention.

First. That the section numbered sixteen, in every township, and when such section has been sold, granted or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

School section.

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Salt springs reserved.

Second. That all salt springs within the said territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole, the quantity contained in thirty-six entire sections, shall be granted to the said State, for the use of the people of the said State, the same to be used under such terms, conditions, and regulations as the legislature of the said State shall direct: provided, the said legislature shall never sell nor lease the same, for a longer period than ten years at any one time.

Proviso.

Five per cent. for roads and canals.

Third. That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said State, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State under the direction of Congress.

Seminary township.

Fourth. That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said State, to be appropriated solely to the use of such seminary by the said legislature.

Seat of government donation.

Fifth. That four sections of land be, and the same are hereby granted to the said State, for the purpose of fixing their seat of government thereon, which four sections shall, under the direction of the legislature of said State, be located at any time in such township and range as the legislature aforesaid may select, on such lands as may hereafter be acquired by the United States, from the Indian tribes within said territory: provided, that such locations shall be made prior to the public sale of the lands of the United States, surrounding such location: *And provided always*, that the five foregoing propositions herein offered, are on the conditions, that the convention of the said State shall provide by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of

Proviso.

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December next, shall be and remain exempt from any tax, laid by order or under any authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years, from and after the day of sale.

Lands sold by the U. States to be exempt from taxation for five years.

ORDINANCE.

Be it ordained by the representatives of the people of the territory of Indiana, in convention met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen, That we do, for ourselves and our posterity, agree, determine, declare, and ordain, that we will, and do hereby, accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled, "an act to enable the people of the Indiana territory to form a State government and constitution, and for the admission of such State into the Union, on an equal footing with the original States."

Propositions of Congress accepted.

And we do further, for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said State of Indiana, as fixed, prescribed, laid down, and established, in the act of Congress aforesaid; and we do also, further, for ourselves and our posterity, hereby agree, determine, declare, and ordain, that each and every tract of land sold by the United States, lying within the said State, and which shall be sold from and after the first day of December next, shall be and remain exempt from any tax laid by order, or under any authority of the said State of Indiana, or by or under the authority of the general assembly thereof, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land; and we do, moreover, for ourselves and our posterity, hereby declare and ordain, that this ordinance, and every part thereof, shall forever be and remain irrevocable and inviolate, without the consent of the United States, in Congress assembled, first had and obtained for the alteration thereof, or any part thereof.

Lands sold by the U. States exempt from taxation.

This ordinance irrevocable.

JONATHAN JENNINGS,
President of the Convention.

ATTEST:
WILLIAM HENDRICKS, *Secretary.*
JUNE 29, 1816.

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LAWS

OF THE

STATE OF INDIANA.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FIFTY-TWO.

CHAPTER 1.

AN ACT prescribing the duties and fixing the compensation of State Agent.

[APPROVED JUNE 17, 1852.]

State Agent; by whom elected.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, At the next session of the General Assembly, and every two years thereafter, there shall be elected by both Houses in joint convention by the vote of a majority of the members present, a State Agent, who shall hold his office for the term of two years, and until his successor is elected and qualified, dating the commencement of his first term under this act, from the expiration of that of the present incumbent.

Term of office

Oath of office and bond.

SEC. 2. Before entering on the duties of his office, such agent shall take an oath to support the constitution of the United States and of this State, and to faithfully discharge his official duties; and shall give bond with sureties to be approved by the Governor, payable to the State of Indiana, in a penalty of fifty thousand dollars, conditioned for the faithful discharge, according to law, of his duties as such agent.

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Shall have charge of suspended debt, &c., and prosecute and defend suits.

SEC. 3. Such agent shall have charge of the suspended debt of the State, and all liabilities growing out of the internal improvement system; and may prosecute or defend suits touching the same, where the State's interests are involved, and for this purpose may employ counsel; or he may adjust such liabilities without suit, and shall discharge all duties incumbent upon him by virtue of an act entitled "an act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," approved January 19th, 1846.

Biennial report. Compensation.

SEC. 4. Such agent shall report biennially to the General Assembly during the first week of its session, his proceedings in the premises; and for his services and expenses, except reasonable attorney's fees, postage, and stationery, touching such agency, he shall receive an annual compensation of twenty-five hundred dollars.

CHAPTER 2.

AN ACT for the encouragement of Agriculture.

[APPROVED FEBRUARY 17, 1852.]

Formation of societies.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That whenever thirty or more persons, residents of any county, or district embracing two counties of this State, shall organize themselves into a society for the improvement of agriculture within said county or district, and shall have adopted a constitution and by-laws, agreeably to the rules and regulations to be furnished by the Indiana State Board of Agriculture, and shall have appointed the usual and proper officers, and when said society shall have raised and paid to their treasurer by voluntary subscription or by fees imposed upon its members, any sum of money not less than fifty dollars; and whenever the president of said society shall certify to the respective county auditors the amount thus paid, attested by the oath or affirmation of the treasurer before a magistrate, it shall be the duty of said county auditors embraced within the district in which such society shall be organized, to draw an order on the treasurer of his respective county in favor of the president and treasurer of said society, for whatever amount of funds there shall have been received during the previous year, for all licenses issued to persons exhibiting menageries, circuses, or theatrical performances, or other shows: *Provided*, Said order shall not exceed the amount raised and paid in by said society by voluntary subscriptions, or fees; and it shall be the duty of the treasurer of said county to pay the same.

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SEC. 2. That it shall be the duty of the several county or district societies which may be formed under the provisions of the preceding section, during the continuance of this act, annually to offer and award premiums for the improvement of soils, tillage, crops, manures, improvements, stock, articles of domestic industry, and such other articles, productions, and improvements as they may deem proper, and may perform all such acts as they may deem best calculated to promote agricultural and household manufacturing interests of the district, and of the State; and it shall also be their duty so to regulate the amount of premiums, and the different grades of the same, as that it shall be competent for small as well as large farmers to have an opportunity to compete therefor; and in making their awards, special reference shall be had to the profits which may accrue, or be likely to accrue, from the improved mode of raising the crop, or of improving the soil, or stock, or of the fabrication of the articles thus offered with the intention that the premiums shall be given for the most economical mode of improvement; and all persons offering to compete for premiums on improved modes of tillage, or the production of any crop or other articles, shall be required, before such premium is adjudged, to deliver to the awarding committee a full and correct statement of the process of such mode of tillage, or production, and the expense and value of the same, with a view of showing, accurately, the profits derived, or expected to be derived therefrom. To award premiums.

SEC. 3. It shall be the duty of each county or district society to publish, annually, a list of the awards, and an abstract of the treasurer's account, in a newspaper of the district, and to make a report of their proceedings during the year, and synopsis of the awards for improvements in agriculture, and household manufactures, together with an abstract of the several descriptions of those improvements, and also make a report of the condition of agriculture in their county or district, which report shall be made out in accordance with the rules and regulations of the Indiana State Board of Agriculture, and shall be forwarded to the State Board, at their annual meeting in January of each year, and no subsequent payment shall be made from the county treasury, unless a certificate is presented to the auditor from the secretary of the State Board, showing that such reports have been made. To publish awards, treasurer's account, &c.

SEC. 4. The State Board as at present constituted and organized, is hereby created a body corporate, with perpetual succession, in manner hereinafter described, under the name and style of the "Indiana State Board of Agriculture." State Board a body corporate.

SEC. 5. It shall be the duty of the State Board to appoint a President, Secretary, and Treasurer, and such other officers as they may deem necessary. The President shall have President, Secretary and Treasurer of Board

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power to call meetings of the Board whenever he may deem it expedient.

Annual meeting of State Board.

SEC. 6. There shall be held in the city of Indianapolis, on the first Thursday after the first Monday in January, an annual meeting of the Indiana State Board of Agriculture, together with the President of each county agricultural society, or other delegate therefrom, duly authorized, who shall, for the time being, be *ex officio* members of the State Board of Agriculture, for the purpose of deliberation and consultation as to the wants, prospects and conditions of the agricultural interest throughout the State; and, at such annual meeting, the several reports from the county societies shall be delivered to the President of the Indiana State Board of Agriculture, and the said presidents and delegates shall at this meeting, elect suitable persons to fill all vacancies in said Board: *Provided, however*, That said election shall not affect the members of the Board present, whose term shall not be considered to expire until the last day of said session.

Annual report.

SEC. 7. It shall be the duty of said Board to make an annual report to the General Assembly of the State, of the receipts and expenditures of the Board, together with such proceedings of the State Board and reports from county agricultural societies, as well as a general view of the condition of agriculture throughout the State, accompanied by such recommendations as they may deem interesting and useful.

State Fairs.

SEC. 8. That the Indiana State Board of Agriculture shall have power to hold State Fairs at such times and places as they may deem proper and expedient, and have the entire control of the same, fixing the amount of the various premiums offered, embracing every article of science and art, or such portions of them as they may deem expedient and proper, calculated to advance the interest of the people of the State. They may employ assistants, receive contributions, donations, &c., and unite with a county or district society for the purpose of defraying the expenses of said State Fairs.

Expenses of State Board.

SEC. 9. The State Board of Agriculture shall certify to the Auditor of State the ordinary expenses of the Board proper, including the necessary personal expenses of their attendance on not more than two meetings in any one year. The Auditor shall audit the same, and on his warrant the Treasurer of State shall pay the same out of any money appropriated for agricultural purposes.

SEC. 10. All laws conflicting with the provisions of this act be, and the same are hereby repealed.

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CHAPTER 3.

AN ACT to authorize and limit allowances by courts and boards, and drafts upon county treasurers.

[APPROVED MAY 27, 1852.]

Money, how to be drawn.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That no money shall be drawn from the treasury of any county, except by authority of law, and in conformity with the rules hereinafter prescribed.

How Auditor may draw warrant.

SEC. 2. The Auditor may draw his warrant on the Treasurer for a sum, the amount whereof, and the time when, and the person to whom, the same may be due, are fixed by law, or ascertainable from a public record, with proof of personal identity.

Same.

SEC. 3. He may also draw his warrant upon the Treasurer for a sum allowed, or certified to be due by any court of record, authorized to use a seal and having jurisdiction beyond that of justices of the peace; or by the board of county commissioners.

To whom allowances may be made.

SEC. 4. The said courts may allow sums to persons serving as assistants to the sheriff, in preparing the court house for the reception of such courts, and in preservation of order, and in attendance upon juries, and to persons performing any services under the order of such court. But the number of such assistants employed shall never exceed the actual necessity of the case.

Same.

SEC. 5. The said courts may also allow such sums as may be due to persons furnishing fuel, used in term time, or furniture for the court room, or making repairs thereof.

Cir. and com. pleas courts may make allowance.

SEC. 6. The circuit courts and courts of common pleas may also make allowance for necessary expenditure incurred under their order, to women, children, or aged or infirm persons summoned as witnesses in State prosecutions.

Allowances by county board.

SEC. 7. The boards of commissioners may make allowances at their discretion: But it is hereby declared to be their duty to avoid as much as possible the necessity for making any allowance for voluntary service, or for things voluntarily furnished, by contracts for such services or things, or by ordering the same to be rendered, at stipulated prices, or by vesting the power to procure such services or things, in an agent, by them nominated of record.

Board to contract with physician for prisoners, paupers, &c.

SEC. 8. It is hereby specially made the duty of such board to contract with one or more skillful physicians, having knowledge of surgery, to attend upon all prisoners confined in jail, or paupers in the county asylum; and may also contract with physicians to attend upon the poor generally in the county; and no claim of a physician or surgeon for such services shall be allowed by such board, except in pursuance of the terms of such contract.

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When appeal shall not lie.

SEC. 9. No appeal shall lie from the decision of said boards making allowance for services voluntarily rendered, or things voluntarily furnished, for the public use.

When appeal may be taken, &c.

SEC. 10. From all decisions for allowances other than those provided for in the preceding section, an appeal may be taken, within thirty days, to the circuit court, the party giving sufficient bond against costs, payable to such board. And if a claim be disallowed in whole or in part, the claimant may appeal; or, at his option, bring an action against the county; but if he shall not recover more on such appeal than is allowed, he shall pay the costs of such appeal.

CHAPTER 4.

AN ACT to provide for the regulation of the running at large of all kinds of animals, within the different townships in the different counties of the State, and to provide for the taking up, impounding, and selling of all such animals as shall not be allowed by law to run at large(*).

[APPROVED MAY 31, 1852.]

County board to direct the kind of animal to run at large.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the board of commissioners of the different counties of this State to direct by an order entered on the order book of said board of commissioners, what kinds of animals shall be allowed to pasture or run at large upon the unenclosed land, or public common within the bounds of any township in their respective counties.

To specify name of kind and class.

SEC. 2. The board of commissioners of the different counties of this State, shall specify in said order, by name, the kind of animals that shall run at large or pasture upon the unenclosed land or public common within the different townships in the county, and also what particular class of the said kinds of animals, whether male or female, and of what age shall be allowed to so run at large.

Animal not allowed to run at large to be taken up.

SEC. 3. Whenever any animal shall be found running at large or pasturing upon any of the unenclosed lands or public common of any township in any county in this State, which shall not be specified in the order of the board of commissioners of said county, as in sections one and two of this act provided, to have the right to so run at large or pasture thereon, any person being a resident of said township shall be authorized to take up and impound said animal in any private or public pound within said township.

Notice of taking up.

SEC. 4. The person taking up and impounding any such animal shall immediately give notice in writing to the owner of such animal, if known to him, if not, he shall give notice

*For trespassing animals, see title "fences."

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by posting up in three of the most public places in the township, a notice in writing, stating therein the time of the taking up, the age and marks, and a full description of the animal taken up, and that the owner thereof is unknown to him, and the place where said animal is impounded.

Notice of sale.

SEC. 5. It shall be the duty of such taker up of any animal, to carefully attend to and provide the animal taken up, with food; and if at the expiration of ten days from the day of posting up of the notices as in section four of this act provided, no person shall appear and claim, and prove the animal so taken up to be his property, the taker up shall immediately advertise the animal for sale, at public auction, by posting up in three of the most public places in the township, written notices, stating therein the time and place of sale, the description of the animal to be sold, that the same was taken up as an animal not entitled by law to pasture upon the public common, which notice shall be posted up at least ten days previous to the day of sale.

Before expiration of ten days, if the owner demand it, property to be delivered up, on payment of costs.

SEC. 6. If at any time before the expiration of ten days from the time of posting up the notices as in section four of this act provided, any person shall appear and claim the animal taken up as his property, and prove by his own affidavit or the affidavit of another person, that the animal taken up belongs to him, and shall pay to the person taking up said animal the sum of three dollars, for his trouble and expense of keeping, he shall be entitled to the custody of the animal so taken up, and it shall be the duty of the taker up to immediately deliver the animal taken up to said owner: *Provided*, that in all cases where the owner shall be notified by the taker up in writing, if he shall immediately proceed to take into his own custody the animal taken up, he shall be liable to pay to the taker up the sum of one dollar and fifty cents only.

Owner not appearing, animal to be sold.

SEC. 7. In all cases where any animal shall be taken up and impounded under the provisions of this act, if the owner shall not appear and claim and prove the animal so taken up to be his property, as in section six of this act provided, previous to the day of sale, specified in the notices of sale, as in this act provided, it shall be the duty of the taker up to proceed and sell at public auction the animal taken up, for the highest price bid for the same; and out of the sum bid for and received for the animal so sold, he shall be entitled to retain the sum of three dollars for his services rendered in the taking up of said animal, and the further sum of ten cents per day for each day he shall have kept and fed the said animal, and the balance of the money received for said animal shall be paid over to the county treasurer, by the taker up, for the use of common schools, and shall belong to and become a part of the State common school fund, and shall be paid over to the Treasurer of State, by the treasurer receiving the same, for that purpose. *Provided*, that it shall

Disposition of the proceeds.

Proviso.

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be the duty of the treasurer to retain the money in his office one year, and if any person shall appear, and prove to the satisfaction of the treasurer and auditor, that the animal sold by the person paying the money into the treasury was his property, the treasurer shall on the warrant of the county auditor, pay the amount received to him, less his fees.

CHAPTER 5.

AN ACT declaring certain persons privileged from arrest on civil process.

[APPROVED MAY 31, 1852.]

Persons privileged from arrest.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the following persons shall be privileged from arrest on civil process, and from obeying any subpœna to testify:

Officers of the General Assembly.

First. All officers of the General Assembly during their attendance therein, and during the time they are going to, and returning from, the place of meeting; not to exceed one day for every twenty-five miles of the usually travelled route.

Voters.

Second. All voters, during attendance at and going to, and returning from, elections.

County commissioners.

Third. Members of the board of county commissioners, during the session of their board, and while going to, and returning from, the same.

Justices.

Fourth. Justices, while engaged in hearing or determining any trial.

At courts.

Fifth. All persons while engaged in necessary attendance upon any court, and in going to, and returning from, the same.

State officers.

Sixth. The Governor, Treasurer of State, Secretary of State, Auditor of State, and Superintendent of Public Instruction.

Militia.

Seventh. All persons while actually engaged in the discharge of military duty.

In places of worship, &c.

SEC. 2. No person shall be arrested in any place of worship during service, or on Sunday, except in cases specified by law, nor on the fourth of July.

Persons to be discharged, &c.

SEC. 3. Any person arrested contrary to the provisions of this act, shall be forthwith discharged, on motion before the court issuing the process, or on habeas corpus, and shall be entitled to recover from the person arresting, or causing him to be arrested, twenty dollars in damages therefor; or a greater amount in the discretion of the jury.

An attachment for contempt deemed civil process.

SEC. 4. An attachment for contempt, in not obeying the command of a subpœna to testify, shall be deemed a civil process, within the meaning of this act.

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CHAPTER 6.

AN ACT to provide for the valuation and assessment of the real and personal property, and the collection of taxes in the State of Indiana; for the election of township assessors, and prescribing the duties of assessors, appraisers of real property, county treasurers and auditors, and of the Treasurer and Auditor of State.

[APPROVED JUNE 21, 1852.]

SECTION. 1 *Be it enacted by the General Assembly of the State of Indiana*, That all taxes for the support of the government of the State shall be assessed on polls, and on property, listed and valued in an equal and ratable proportion, (except as to the tax on stock in the State Bank, and such other stocks as may be specifically taxed,) in the following manner, namely: the amount necessary and proper to be charged on each poll and on each hundred dollars worth of property for State expenditures, and for school purposes, shall, from time to time, be fixed by law; and the amount to be charged on each one hundred dollars' worth of property, for county expenditures, shall be determined by the board of county commissioners at their annual meetings in June. Taxes, how assessed.

SEC. 2. A poll tax shall be assessed upon every white male inhabitant of this State between the ages of twenty-one and fifty years. Poll tax.

SEC. 3. All real property within this State, and all personal property owned by persons residing within this State, whether it is in or out of this State, and all personal property within this State, owned by persons not residing within this State, subject to the exceptions hereinafter stated, shall be subject to taxation. What property subject to taxation.

Definitions.

SEC. 4. The terms "real property," and "land," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out in town lots or otherwise, with all things contained therein, but also all buildings, structures and implements, trees, and other fixtures of whatever kind thereon, and all rights and privileges belonging, or in any wise appertaining thereto, including all stoves in any building belonging to the owner of such building, and used instead of fire-places. The terms "real property," &c., how construed.

SEC. 5. The terms "personal estate," and "personal property," as used in this act, shall be construed to include all household furniture, goods, chattles and moneys on hand or on deposit, either within or without this State; all ships, steamboats, canal boats and flat boats, whether within or without this State; all moneys at interest whether within or without the State; all public stocks, Indiana State stocks, stocks of other States and of the United States; stocks in The terms "personal estate," &c., how construed.

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railroads, plank roads, turnpike roads, canals, toll bridges, insurance companies, trust companies, savings institutions, manufacturing companies, and in all moneyed and stock corporations, whether within or without this State.

What property shall be exempt.

SEC. 6. The following property shall be exempt from taxation:

First. The real and personal property of the United States and of this State.

Second. Every school house, court house, market house, poor house, and jail, and the land whereon such buildings are situate, and all county lands and buildings set apart for county purposes.

Third. All fire engines, hose, hooks, ladders, and other apparatus for the extinguishment of fires, and all fire engine houses, with the land on which the same may be situated, and all powder magazines, with the land on which they may be situated, belonging to or owned by any incorporated town or city in this State, and held by such town or city for the use, benefit, safety, or convenience of the public.

Fourth. Every building erected for religious worship, and the pews and furniture within the same, and the lands whereon such building is situate, not exceeding ten acres; also, every cemetery.

Fifth. Every building erected for the use of any literary, benevolent, charitable or scientific institution, or erected for the same purpose by any town, township or county, and the tract of land on which such building is situate, not exceeding twenty acres; also, the personal property belonging to any institution, town, township, city or county, and connected with or set apart for any of the purposes aforesaid.

Sixth. All lands granted for the use of common schools, so long as the same shall remain unsold.

Seventh. The personal property and real estate of every manual labor school or college incorporated within this State, when used or occupied for the purposes for which it was incorporated, such real estate not to exceed three hundred and twenty acres.

Certain property not exempt.

SEC. 7. If any part, parcel or portion of any tract or lot of land, or of any buildings or personal property, enumerated in the preceding section as exempt from taxation, shall be used or occupied for any other purpose or purposes than those recited in said section, by reason whereof they are exempted from taxation, such part, parcel or portion shall be subject to taxation so long as the same shall not be set apart or used, exclusively, for some one of the purposes specified in the said enumeration.

Lands sold by State.

SEC. 8. Lands sold by the State, including lands forfeited to the sinking fund, university fund, and all other trust funds, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed.

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Lands reserved by treaty.

SEC. 9 All lands reserved to or for any individual, by any treaty between the United States and any Indian tribe or nation, shall be liable to taxation from the time such treaty shall have been confirmed.

By whom, where, and in what manner property shall be listed.

Property, how listed.

SEC. 10. Every person of full age and sound mind, not a married woman, shall list the real and personal property, subject to taxation, of which he is the owner, situate or being in the county in which he resides, and all moneys in his possession; and he shall also list moneys deposited subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic; whether in or out of such county. The property of every ward shall be listed by his guardian; of every minor child having no other guardian, by his father, if living; if not, by his mother, if living; and if neither father nor mother be living, by the person having such property in charge; of every wife, by her husband, if of sound mind; if not, by herself; of every person for whose benefit property is held in trust, by the trustee; of every estate of a deceased person, by the executor or administrator; and if such decedent died after the first day of January, without giving in the amount of his taxables, his administrator or executor shall give in the same as though such property had been in his possession on the first day of January; of corporations whose assets are in the hands of receivers, by such receivers; of every company, firm, body, politic or corporate, by the principal accounting officer, partner, or agent thereof. Every person required to list property on behalf of others, by the provisions of this section, shall list it in the same township in which he would be required to list it if such property were his own; but he shall list it separately from his own, specifying, in each case, the name of the person, estate, company or corporation to whom it belongs; and all real property, and merchants' and manufacturers' stock, shall be returned for taxation, and taxed in the township and town in which it is situated; and all other personal property, except such as is taxable for State purposes only, shall be entered for taxation in the township and town in which the person charged with the tax thereon resided at the time a list thereof was taken by the assessor, if such person reside in the county where such property was listed; and if not, then such property shall be entered for taxation and taxed in the township where situated when listed, anything in this act to the contrary notwithstanding.

Property in other counties.

SEC. 11. Property of whatever kind, situate or being in any county other than that in which the owner or owners thereof, or other person required by the foregoing section to list the same, resides, except the property of such companies as are required to give a statement thereof in the township

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where the principal office of such company is kept, and merchants' and manufacturers' stock which is required to be listed where the same is situated, shall be listed in the township where the same is situate, by the agent of the owner, or other person having possession or charge thereof, unless the owner shall list, or cause the same to be otherwise listed in the township where such property may be.

Poll tax. SEC. 12. Every person shall be listed for his poll tax in the township where he resides when the enlistment is made.

Personal estate. SEC. 13. Every person shall be listed in the township where he resides when the enlistment is made, for all personal estate owned by him on the first day of January of the year in which the enlistment is made, including all personal estate in his possession, or under his control as trustee, guardian, executor or administrator.

Real estate. SEC. 14. Every person shall be listed in the township where he resides when the enlistment is made, for all lands by him owned within such township, on the first day of January in which the enlistment is made, and occupied by him or wholly unoccupied, including all such real estate owned or held by him as trustee.

Lands not occupied by owner. SEC. 15. Lands occupied by any person not the owner thereof, shall be listed in the name of the owner, if known, otherwise in the name of the occupant; and for the taxes, if paid by such occupant, he shall have his action against the owner.

Lands unoccupied. SEC. 16. Unoccupied lands shall be listed in the name of the owner, if known, otherwise as "land of persons unknown."

Lands lying in grants or reserves. SEC. 17. When the line between two townships divides a tract of land lying in the grants to English or French emigrants, or in Clark's grant, or in individual Indian reserves, (surveyed differently from the United States' survey,) if listed to the owner thereof, he being a resident of either township in which a part of such tract of land may lie, or if listed to the occupant, under the thirteenth section of this act, the same shall be listed in the township in which such owner or occupant shall reside; and in all other cases the same shall be listed in the township in which the greater part thereof lies.

Mortgaged personal estate. SEC. 18. When personal property is mortgaged or pledged, it shall, for the purposes of taxation, be deemed the property of the party who has the same in possession.

Mortgaged real estate. SEC. 19. In cases of mortgaged real estate, the mortgagor shall, for the purposes of taxation, be deemed the owner until the mortgagee shall have taken possession of the mortgaged premises, after which the mortgagee shall be deemed the owner.

Undivided real estate of decedents. SEC. 20. The undivided real estate of any deceased person may be listed to the heirs or devisees of such person, without designating any of the heirs or devisees by name, until they shall have given notice to the auditor of the county or coun-

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ties in which such real estate is situate, of the division of the same, and the names of the several heirs or devisees, and the proportions allotted to each; and each heir or devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs or devisees their respective proportions thereof, when paid by him.

Partners.

SEC. 21. Partners in mercantile or other business, may be jointly listed in their partnership name, in the township where their business is carried on, for all their personal property employed in such business; and in case of being so jointly listed, each partner shall be liable for the whole tax.

Assessor, when to leave notice, receive statements, and grant further time.

SEC. 22. Each assessor shall, between the first day of January and the first day of May, in each year, leave with every person required to list property for taxation, the notice and blank list required by this act; and the assessor shall, at the time of leaving the the notice and blank list, receive from such person the statements required by the succeeding section, of his, her or their personal property, moneys, rights, credits, effects and corporation stocks, held in trust or owned by such person on the first day of January of the current year, unless such person shall require further time to make out such statements; in which case he shall give such person such further time as he may deem necessary: *Provided, however*, Such further time shall not extend beyond the first day of May.

Statements, how made out. 1st statement to be sworn to; 2d to be signed by person making it.

SEC. 23. Each person required by this act to list property for taxation, shall make out two separate and distinct statements:

The first statement shall be made out by the person assessed or designated in this act, or by the assessor, from information given by such person, and shall be signed by the person making it; and the assessor shall require of such person to take and subcribe, on such statement, an oath or affirmation, that to the best of his, her or their knowledge, information and belief, the said statement contains a true, full and fair list of the moneys, rights, credits, effects, ships, canal boats, flat boats, steamboats, personal property appertaining to merchandizing and manufacturing, and corporation stocks of the person making such list, or of the person or persons on whose behalf the same is made, and that the same have been valued at their true cash value, as such person verily believes; which oath or affirmation may be administered by the assessor or his deputy, who are hereby authorized to administer all oaths or affirmations that may be required in the performance of any of the duties of their office, by the county auditor, or any person authorized to administer oaths; and such statement shall distinctly set forth:

First. Money on hand or on deposite, either within or without this State.

Second. Money at interest, either within or without this State.

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Third. The value of all demands against any person or body corporate, either within or without this State;

Fourth. The value of all ships, canal boats, flat boats, and steamboats, whether within or without this State;

Fifth. The value of all personal property appertaining to merchandizing;

Sixth. The value of all personal property appertaining to manufacturing;

Seventh The amount and value of all bonds issued by bodies corporate or politic, all corporation stocks, Indiana State stocks, and stocks of other States, and of the United States, whether within or without this State, excepting stocks in the Indiana State Bank, and such other stocks as may be specifically taxed.

The second statement shall be made out by the person assessed or designated in this act, or by the assessor, from information given by such person, and shall be signed by the person making it, and returned to the assessor within the time provided for the first statement, above mentioned; and the said statement shall truly, honestly and distinctly set forth:

First. The number of horses, mules and asses, and their value;

Second. The number of cattle and their value;

Third. The number of sheep and their value;

Fourth. The number and value of swine;

Fifth. The number of carriages, wagons, coaches, hacks, carts, drays, and other vehicles and their value;

Sixth. The number of watches and clocks, and their value;

Seventh. The number of piano fortes and other musicial instruments and their value;

Eighth. The value of farming utensils, mechanic tools, law and medical books, surgical instruments and medicines;

Ninth. The value of all household furniture, beds, bedding, &c.;

Tenth. The value of corn, hay, oats, rye, potatoes, fruits, wheat, wool, pork and bacon;

Eleventh. The value of all and every species of personal property not specified above, nor included in statement number one;

Twelfth. The age of the person, if a male, whether over twenty-one and under fifty years of age: *Provided*, That each tax payer may and is hereby authorized to deduct the amount of his indebtedness out of his solvent claims.

Proviso.

Duty of assessor upon failure to make statements, or take oath, may procure evidence.

SEC. 24. In every case where any person shall refuse or neglect to make out and deliver to the proper assessor, the the statements prescribed in the twenty-third section of this act, or shall refuse to take and subscribe the oath or affirmation required in said section, the assessor shall, in every such case proceed to ascertain the number of the several articles of each description enumerated in the said twenty-third sec-

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tion, the value thereof, the value of the personal property subject to taxation, other than such enumerated articles; and to enable him to do so, he is hereby authorized to examine on oath any person whom he may suppose to have knowledge of the amount or value of the enumerated articles and personal property, which the person so refusing or neglecting was required to list.

Person refusing to give evidence to be summoned to answer; costs, &c., adjudged against person failing to make statements, or take oath.

SEC. 25. If any person who shall be required by the assessor to give evidence, as provided in the preceding section, shall refuse to be sworn by the assessor, or if, having been sworn, he shall refuse to answer such questions as the assessor shall put to him, touching the subject of inquiry, any justice of the peace of the county, to whom the assessor shall make application therefor, shall summon such person to appear before him, at such time as the assessor shall designate, and answer, on oath, all pertinent questions which shall be put to him by the assessor, or his order, touching the amount and value of the personal property, moneys and assessables, (other than real estate,) which the person required to list the same, has neglected or refused to list; and every constable and witness, for refusal or neglect to obey the process of such justice herein provided for and contemplated, shall be subjected to the same penalties as they may by law be subject to for refusing to obey the process of justices of the peace in civil cases, and shall receive the same fees as for like services in civil cases; and such justice of the peace shall immediately proceed to enter judgment for all such fees and for his own costs, in favor of the State of Indiana, against the person who shall have refused to make and deliver to the assessor a statement of the property which, by this act, he was required to list, or who shall have refused to take the prescribed oath as to the amount or value thereof, and proceed to collect and pay over the same, as in civil cases.

Of listing and valuing the property of Merchants and Manufacturers.

Who deemed a merchant, and how he shall make out statement.

SEC. 26. Every person that shall own or have in his possession or subject to his control, any personal property within this State, with authority to sell the same, which shall have been purchased either in or out of this State, with a view of being sold at an advanced price or profit, or which shall have been consigned to him from any place out of this State for the purpose of being sold at any place within this State, shall be held to be a merchant; and at all times when he shall be, in pursuance of this act, required to make out and deliver to the assessor a statement of his other personal property, he shall state and attest on oath or affirmation, the value of such property appertaining to his business as a merchant; and in estimating the value thereof, he shall take as a criterion the

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average value of all such articles of personal property which he shall have had from time to time in his possession or under his control, during the year next previous to the time of making such statement, if so long he shall have been engaged in business, and if not, then during such time as he shall have been so engaged, and the average shall be made up by taking the amount in value on hand, as nearly as may be, in each month of the next preceding year in which the person making such statement shall have been engaged in business, adding together such amounts and dividing the aggregate amount thereof by the number of months that the person making the statement may have been in business during the preceding year: *Provided*, That no consignee shall be required to list for taxation the value of any property the product of this State, which shall have been consigned to him for sale or otherwise from any place within the State, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded; *Provided*, he shall in either case have no interest in such property, nor in any profit to be derived from its sale; and the word "person," as used in this and the two succeeding sections, shall be held to mean and include "firm," "company," and "corporation."

Proviso.

Who deemed a manufacturer, and how he shall make out statement.

SEC. 27. Every person who shall purchase, receive or hold personal property of any description for the purpose of adding to the value thereof, by any process of manufacturing, refining, rectifying, or by the combination of different materials with a view of making a gain or profit by so doing, shall be held to be a manufacturer, and he shall, at all times, when by virtue of this act he is required to make and deliver to the assessor a statement of the amount or value of his other personal property subject to taxation, also state the average value, estimated as provided in the preceding section, of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining, which from time to time he shall have had on hand during the year next previous to the time of making such statement, if so long he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged; and such statement he shall attest on oath; but in determining the value of all articles manufactured by him and remaining on hand unsold, the cost of the materials entering into their combination, or of which they were made, with the cost of the materials used or consumed in the process of manufacturing, combining, rectifying, or refining, shall be taken as the criterion of their value, for the purpose of taxation.

Engines, &c., to be listed as personal property.

SEC. 28. Every person owning a manufacturing establishment of any kind, and every manufacturer shall list as a part of his personal property, the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing, (except such fixtures as

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shall have been considered as part of any tract or lot, or real property,) including all the tools and implements of every kind used or designed to be used for the purposes aforesaid.

Merchant commencing business after 1st January to pay for fraction of a year.

SEC. 29. When any person shall commence merchandising in any county after the first day of January, the average value of whose personal property employed in merchandising shall not be entered on the assessor's list for taxation in said county, such person shall report under oath to the auditor of the county, the probable average value of the personal property by him intended to be employed in merchandising until the first day of January next thereafter, and shall pay into the treasury a sum that shall bear the same proportion to the levy for all purposes, on the average value so employed, as the time from the day on which he shall commence merchandising as aforesaid, to the first day of January next succeeding, shall be to one year.

Auditor may appoint a person to notify merchants.

SEC. 30. The auditor of each county in this State shall if he deem it necessary, have the power to appoint a competent person in his county to notify all such persons who shall commence merchandising after the first day of January, and the average value of whose personal property employed in merchandising shall not be entered on the assessor's list for taxation, to report themselves to the county auditor, and make payment to the county treasurer for the purposes contemplated by the preceding section; and such person so appointed, shall receive such compensation as the auditor shall direct, subject to the approval of the board of county commissioners.

Penalty for failure to report to auditor.

SEC. 31. If any person shall commence merchandising as aforesaid, and shall not, within one month thereafter, report to the county auditor, and make payment to the county treasurer, as required in section 29, he shall forfeit and pay two per cent. on the value of personal property by him employed in merchandising, to be ascertained as near as may be, by the testimony of witnesses, and recovered by an action of debt in the name of the county treasurer, for the use of the county, before any justice of the peace, or court having jurisdiction thereof.

Of listing Corporation and Public Stocks.

Duty of accounting officers of corporations.

SEC. 32. It shall be the duty of the president, secretary, agent or other proper accounting officer of every railroad, plank road, turnpike road, slackwater navigation, telegraph, and bridge company in this State, to furnish to the auditor of the county where their principal office is situated, a list of all the stock in said company, and its value, attested by the oath of the officer making the same, and shall furnish a statement dividing the aggregate amount of all the stock of such company amongst the several counties in proportion to the value of the superstructure, buildings and real estate of such company in each county, and if any such company shall not have in this State its principal office for the transaction of its financial business, it shall be the duty of the president, cashier, secretary, treasurer, engi-

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neer or constructing agent of such company, to furnish the auditor of the county where the work first enters the State, a statement under the oath or affirmation of the officer making it, specifying the amount and value of all real estate owned by such company within this State, the amount expended in the construction of said work within the lines of this State, and the amount invested in machinery and rolling stock of every kind; which said machinery and rolling stock shall be assessed for taxation in the same proportion to its total amount that the length of line of the work in this State, completed, bears to the entire length of the line of said work completed.

Duty of auditor; proper officers of company to pay taxes.

SEC. 33. It shall be the duty of such auditor to enter the name of such company or corporation on the tax duplicate, with the amount and value of said stock, and assess thereon for state, county, school and road taxes, according to the amount of taxes fixed for those purposes for that year in the several counties through which such road, slackwater navigation, or telegraph line, may run or pass, and the said president or other proper officer of any such company, shall pay to the treasurer of the proper county the taxes so assessed as aforesaid, on said stock, together with all damages, interest and cost, that may be due thereon.

Duty of treasurer.

SEC. 34. The treasurer of such county shall divide the tax so collected, (except the State tax, which shall be paid into the State Treasury as in other cases,) among said counties in proportion to the value in each county as ascertained under the provision of the 32d section of this act, and rate fixed in the several counties as provided in the 33d section.

Treasurer's commission.

SEC. 35. The treasurer's commission on the amount collected from such companies shall be, on the State portion of the tax, one half the rate allowed in other cases, which shall go to the treasurer collecting the same, and on the residue of the tax the collecting commisson shall be the same as in other cases, and shall be equally divided between the treasurer of the county where the tax is assessed, and the treasurer of the county entitled to the same. If any toll bridge is situated in two or more counties, the said treasurer shall divide the tax so collected from any such bridge company equally between the counties in which such bridge may be situated, first deducting his commission as aforesaid; and the said treasurer, upon paying over any tax to any other county, shall take the receipt of the county treasurer to whom he may pay the same, and such receipt shall be a sufficient voucher to said treasurer, in his settlement with the county auditor.

Toll bridge.

Mills, &c., on lands leased by trustees of the Wabash and Erie Canal.

SEC. 36. All mills, manufactories, warehouses, and other structures, with the appurtenances and fixtures erected or placed upon any lands leased by the board of trustees of the Wabash and Erie Canal, shall be assessed to the lessees of such lands or their assigns in possession of and occupying the same.

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Duty of auditor if company fail to furnish statement.

SEC. 37. If any such companies shall fail or refuse to furnish the statement required by this act, by the first of June in any year, the proper county auditor shall proceed to make out such list from the best information he can obtain; and in doing so he shall be governed by the provisions of the twenty-fourth and twenty-fifth sections of this act.

Taxes on corporations to be paid or collected as in other cases.

SEC. 38. The county treasurer shall obtain payment of all taxes assessed on incorporated companies, from the president or other proper officer of such companies, in the same manner as in other cases, and if not paid, shall proceed in the collection and payment thereof, and penalties thereon, in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of moneys collected by him.

Taxes to be paid out of funds of company.

SEC. 39. Such taxes shall be paid out of the funds of the company, and shall be ratably deducted from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared.

If treasurer cannot collect, company to be returned delinquent.

SEC. 40. If the county treasurer shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the county auditor, and be allowed therefor as in other cases; and the county auditor shall certify the same with the delinquent taxes on [to] the Auditor of State.

Penalties and interest.

SEC. 41. The same penalties and interest shall be charged on the delinquent taxes due from incorporated companies as in other cases.

The Auditor of State may file bill against company; court shall order sequestration, may enjoin company, &c.

SEC. 42. If any such company shall not have real estate out of which to make such delinquent taxes, the Auditor of State may, if he deem it expedient, cause to be filed in the proper court, a bill against such company, for the discovery and sequestration of its property; which court shall order such part of the property of such company to be sequestered as they shall deem necessary for the purpose of satisfying the taxes, penalties, and interest in arrear, with the costs of prosecution; and they may also at their discretion enjoin such company and the officers thereof, from any further proceedings under their act of incorporation, and may order and direct such other proceedings as they shall deem necessary to compel the payment of such tax, penalties, interest, and costs.

Action may be brought in circuit or common pleas court.

SEC. 43. Or such tax, penalties, and interest may be recovered, with costs, from such delinquent company, by action in the name of the State on the relation of the Auditor of State in the circuit or common pleas court of the proper county.

Of the appraisement of real property.

Appraisement list of 1851 to stand.

SEC. 44. The appraisement list of the taxable real property of this State, made under the authority of an act entitled "an act to appraise the real estate of this State, and to make the value of the same equal and uniform throughout the State," approved February 13, 1851, shall stand and be considered as

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the grand levy of the State, subject to such alterations as herein provided for.

If appraisement has not been made, it shall be made under that act, maps to be procured, &c.

SEC. 45 Should no appraisement list have been made in any county, under the act recited in the preceding section, the same shall be made in the manner prescribed in said act; and should the maps required by the fourth section of the act, entitled an "act to value the property of the State," approved February 12, 1841, not have been procured and delivered to the assessors, the same shall be forthwith procured and delivered by the county auditors, and copies of such maps heretofore delivered, or hereafter to be delivered, shall be retained in the office of the county auditor; and thereon, as occasion may require shall be noted all changes that shall have taken place in the situation and ownership of land, so that, as far as possible, the same may exhibit the true boundaries and owners' names of each and every tract and lot of land in each county.

Auditor of State to procure lists of lands, and transmit to county auditors

SEC. 46. A list of lands becoming taxable for the first time shall, under the supervision of the Governor, be procured by the Auditor of State from the proper land offices at the best price for the State. He shall also, on or before the first day of January, annually forward the same to the proper county auditors for which service he shall be allowed no greater amount per township than is necessarily paid for the original.

Auditor to transfer lands on assessment list.

SEC. 47. Whenever partitions shall have been made or other change taken place in the ownership of any tract or lot of land, or any part thereof by sale and conveyance, or by devise or descent, the county auditor, on receiving satisfactory information thereof, shall transfer the same on the last appraisement list, and apportion the same, and the valuation thereof, to the several owners; such apportionment of value to be made by agreement of the parties, either in writing filed with, or personally in presence of the auditor, he being satisfied of the justice thereof; otherwise to be ascertained by the assessor.

Auditor may examine records of deeds and wills.

SEC. 48. The county auditor shall have the right to examine the record of deeds and wills in his county, without charge, to enable him to discharge, the duty required of him in the preceding section.

Duty of appraiser.

SEC. 49. The appraiser shall, upon actual view make a true valuation of all lands together with the improvements and buildings thereon, or affixed thereto, at their full value in money, as he would appraise the same in payment of a just debt due from a solvent debtor, taking into consideration the fertility and quality of the soil, the vicinity of the same to railroads, McAdamized roads, clay roads, turnpike roads, plank roads, State of county roads, cities, towns, villages, navigable rivers, water privileges on the same, or in the vicinity of the same, the location of the route of any canal or canals with any other local advantages of situation: *Provided*, That said appraisers shall also value all lands at their cash value without taking into consideration any improvements that may be made thereon,

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and this valuation, as well as the valuation with improvements shall be set down in a proper column to be left for that purpose.

In-lots and out-lots in all towns, cities, and vilages, with the improvements made thereon or affixed thereto, shall be valued at their true and full value in money, taking into consideration all the local advantages of situation, to be valued upon actual view of the premises.

Appraisers to call for lists of lands.

SEC. 50. The appraiser shall call upon each and every person resident in his county, for a list of all lands and town in-lots and out-lots owned by such person or persons lying within his county, which may be subject to taxation, which list shall particularly set forth the names of the owner or owners, the number of acres of land in each particular tract, lot, section, or subdivision thereof, the range, township, section, quarter section, tract, lot, or part thereof, or the number of the entry, location or survey, and water course, as the nature [of the] general or particular survey may require, and if the same cannot be described by the Congressional survey, then it shall be described by metes and bounds, so as to designate and identify the same; and in the French and English grants, or Clark's grant, shall set forth the quantity of land contained in the original survey, of which the tract listed is a part, subject to the provisions of this act, the number of the entry, water course, and the name of the original proprietor; also, all in-lots and out-lots owned or held as aforesaid with the number thereof, as described on the recorded plat of said town or part thereof, if it has been subdivided; which statement shall be made out by the person assessed, or by the assessor, from information given by such person, and shall be signed by the person making it.

How lists are to be made out.

If the owner be absent, or fail, appraiser to make out list.

SEC. 51. If the owner or owners of any property required to be listed and appraised by the preceding section of this act, shall be absent or unable to give in a list thereof when called upon by the appraiser, or if the owner or owners thereof shall not reside within the county or shall fail or refuse to deliver to such appraiser a list of his, her or their real estate as aforesaid, it shall be the duty of such appraiser to make a list thereof according to the best information he can obtain, subject to the provsions of the eighth section of this act, in the name of the owner, if known, or in the name of the person to whom the same is now listed; but if it be not listed, and the owner's name be unknown, then it shall be noted that the owner is unknown, in the column of names; and to enable him so to do, he is hereby authorized to examine, on oath or affirmation, any person whom he may suppose to have knowledge of the amount and value of all lands which such person refuses to list as required.

May procure evidence.

Rules to govern appraiser.

SEC. 52. The appraiser, in ascertaining or determining the quantity of land in the several tracts within his county, shall be governed by the following rules: Whenever the owner or

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person in whose name it is listed, shall hold, by virtue of a deed from another party, or from the State of Indiana, or by patent from the United States for Congress lands, such deed or patent, if the quantity be therein stated, shall be taken as the evidence of the quantity in the tract described; but if such lands shall have been surveyed subsequent to the survey made by the United States, and it shall be proven to the satisfaction of the appraiser that any such tracts of land contain a greater or less quantity than is described in the patent or deed under which such lands are held, then the appraiser shall charge the owner with the true quantity as ascertained by such subsequent survey; if the owner or person in whose name any lands are listed within the French or Clark's grant, shall hold, under an original entry or survey with or without the patent thereon, it shall be the duty of the appraiser to require the said owners or holders to cause the same to be surveyed by the county surveyor, or some other competent person, and to return the quantity under the certificate of [said] surveyor, attested by oath or affimation, within sixty days after said owners or holders shall have been called upon to list their lands for taxation; and if any such owner or holder shall refuse or neglect to survey and list his lands as herein provided, or if he, she, or they, be non-residents of the county, then it shall be the duty of the appraiser to cause such lands to be surveyed and return to himself; the expense of which survey shall be paid from the county treasury, and be by the auditor of the county assessed against such lands in the succeeding year and collected in the same manner as taxes are collected thereon: *Provided*, That if any owner or holder of lands has had the same previously surveyed, and shall produce to the appraiser a certificate of survey other than that under the original entry of said lands, such survey shall be taken by such appraiser, if the appraiser shall be satisfied, from other competent evidence adduced to him under oath or affimation, that the quantity returned is correct, and that no surplus exist in the original survey, he shall enter and return the same without further survey for taxation.

Proviso.

How appraisers shall complete list.

SEC. 53. The appraiser shall complete his list, taken as before provided, placing on the same, opposite to each tract of land listed, and if a town lot or part of a lot, the value without improvements, and also in another column opposite, the value of the improvements erected thereon or affixed thereto; and opposite to each town lot or part of lot, the value of such lot or part of lot, appraised with the buildings and all other improvements erected thereon or affixed thereto.

Appraiser inform owner of amount of appraisement, &c.

SEC. 54. The appraiser shall, at the time of making the appraisement and taking the list required by the preceding section of this act, inform the owner or owners, his, her or their agent or representative, if residing within the county, or shall leave a memorandum at his, her or their residence, of the amount at which his, her or their real estate has been appraised,

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respectively, and of the time when the board of equalization for the county will meet for the purpose of hearing and determining grievances, and to equalize taxes within the same.

Appraiser may examine buildings.

SEC. 55. For the purpose of enabling the appraiser to determine the value of buildings and other improvements, he is hereby required to enter, with the consent of the owner [or] occupant thereof, and fully examine all buildings and structures of whatever kind, which are not by the laws of the State expressly exempted from taxation.

Appraiser's return, when and how made.

SEC. 56. Each appraiser shall, on or before the first of June, make out and deliver to the auditor of his county a return, in tabular form and alphabetical order, contained in a book to be furnished him by such auditor, of the amount, description and value of all the real estate subject to be listed for taxation in this county, which return shall contain:

First. The names, arranged in alphabetical order, of the several persons, companies or corporations in whose names the several parcels of real estate in each township within his county shall have been listed, and in appropriate columns opposite each name, the description of each parcel of such real estate listed in such name, and the value of each separate parcel of such real property, as determined by the appraiser from actual view.

Second. The names, arranged in alphabetical order, of the several persons, companies or corporations in whose names the several parcels of real property in any town or towns in his county shall have been listed, and in the appropriate columns opposite each name—

The description of each parcel of real property in each town in his county; and the value thereof, as determined by the appraiser as above specified; and such return shall distinctly set forth the name or names of the owner or owners of each separate parcel of real property, if known, and if unknown, that fact shall be set forth; also a correct and pertinent description of each separate parcel of land or real property; if a town lot or part thereof, the name of the town, the number or other designation of the lot; and if a part of such lot, then the proportion and situation thereof; and the extent, in feet, along the principal street on which it shall abut. If the parcel of real property be other than a town lot or a parcel thereof, the number of acres; the land district; the range of townships; the number of townships; the number of the section, tract, lot or subdivision of either, as the case may require.

If such land be situated in the French or Clark's grant, or is not embraced in any land district, it shall set forth the original survey or surveys, part or parts thereof contained in each separate parcel so listed; and if any separate parcel of land shall comprehend the whole or parts of any two or more sections, lots, tracts or surveys, then the statement shall set

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forth, as nearly as may be, the number of acres taken from each section, lot, tract or survey included in such parcel.

SEC. 57. Each appraiser shall take and subscribe an oath, which shall be certified by the magistrate or other officer administering the same, and attached to the return which he is required to make to the county auditor in the following form:

Appraiser's oath.

I, ————————, appraiser for the county of ———, in the State of Indiana, do solemnly swear that the return to which this is attached, contains a correct description of each parcel of real property within said county, as far as I have been able to ascertain the same, that the value attached to each parcel in said return is, I verily believe, the full and true cash value thereof, estimated agreeably to the rules prescribed by law; that in no case have I knowingly omitted to demand a statement of the description and value of all the real estate which I am required by law to list, or in any way connived at any violation or evasion of any of the requirements of the law, in relation to listing and valuing real estate; which

Abstract kept by auditor.

abstract shall be kept at the office of the county auditor for the inspection of any owner of property contained on such abstract, until the first day of September as aforesaid; and it

Auditor to give notice of meeting of board of equalization.

shall be the duty of the county auditor to give four weeks' public notice, by advertisement in a newspaper, if one be published in the county, or if no newspaper be printed in the county, by advertisement set up at the door of the court house, and at some public place, in each township, of the time and place, when and where the special board for equalization for each county will meet for the purpose of hearing and determining grievances, and to equalize taxes thereon.

Who shall constitute a special board of equalization.

SEC. 58. The board doing county business, county auditor, and appraiser or appraisers of each county of this State, shall constitute a special board of equalization for such county, on the first Monday of June, in each year, when the real estate is valued, and the county auditor shall produce to said board the abstract returned to him by the appraiser; and said board,

Their powers.

or a majority of them, shall have power to hear and determine the complaint of any owner or owners, his, her or their agent, attorney or representative, of any property contained on said abstract, which may have been listed and appraised by said appraiser, relative to the listing and appraising thereof, and to correct the same, as right and justice may require; and said board of equalization shall moreover have power to equalize the valuations made by such appraiser as hereinbefore provided, either by adding, or deducting from any valuation made as aforesaid, such sum as to them or a majority of them may appear just and equitable.

Compensation of appraiser and special board.

SEC. 59. The appraiser and deputy appraiser shall each be allowed, for the time that they may necessarily be employed

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in the performance of their duties, not less than one dollar and fifty cents nor more than two dollars per day, to be determined by the board doing county business; which allowance shall be paid out of the county treasury. The said appraisers shall make out their accounts in detail, giving the date of each day which they shall have been employed; which account they shall verify under oath; and the board doing county business, if they shall find such statement to be correct, shall allow the same, but in no case shall the same be allowed until the appraiser shall have filed his list of assessments, with the statements returned to him, and the books in which the original assessments were entered, with the auditor; the list to be accurately made out and added up. And the county auditor, appraiser, and county commissioners, when acting as members of the county board of equalization for the several counties, shall receive the sum of two dollars for each day they shall be respectively be employed in the discharge of the duties required of them by this act, to be paid out of the respective county treasuries.

Appraiser's account, how kept and verified.

SEC. 60. Each appraiser and deputy appraiser shall, at the end of each week in which he shall have been engaged in the performance of any of the duties required of him by law, enter an account in writing of the number of days or parts of days he may have been so engaged during the week; at some stated meeting of the board doing county business shall present such original account to said board, and shall testify under oath or affirmation to the accuracy of such statement, and shall answer such questions respecting the same as may be put to him by the board.

Appraiser's penalty for neglect of duty.

SEC. 61. If any appraiser shall, by himself or deputy, or deputies, be guilty of any neglect of duty which by any law now in force or which may hereafter be enacted, it is made his duty to perform, the board doing county business may make such deduction from his account for services rendered as they may deem just and reasonable; and he shall moreover, be subject to presentment and indictment by the grand jury of the county, and may be fined in any sum in the discretion of the jury trying the same, for the use of common schools; and it is made the duty of the judges of the circuit court to give this act in charge to the grand jury of the proper county.

Refusal to furnish list to be noted.

SEC. 62. The appraiser shall enter in a column provided for that purpose opposite the name of every person, company or corporation required to list his real estate, and who has refused to furnish the list required, these words, "refused to furnish a list."

Appraiser to deliver the original statements to auditor.

SEC. 63. Each appraiser shall, at the time he is required by this act to make return of the taxable real property to the county auditor, also deliver to him all the statements of

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property which he shall have received from persons required to list real estate, the same arranged in alphabetical order, and said auditor shall carefully file and preserve the same.

Of the election of Assessors and their qualifications, powers and duties.

Assessor, when elected.

SEC. 64. On the second Tuesday in October, in the year one thousand eight hundred and fifty-two, and biennially thereafter, there shall be elected in each township in this State, one assessor in and for such township, by the qualified

Tenure of office.

voters thereof. Such assessors shall hold their office for the term of two years, and until their successors shall be elected and qualified, and shall do and perform all such duties as now are or may hereafter be required by law to be performed by assessors.

Sheriff to give notice.

SEC. 65. It is hereby made the duty of the sheriffs of the several counties in this State to put up three printed or written notices in three of the most public places in the several townships of the proper county, at least twenty days previous to the time of said election, specifying the time and place of holding the same; and like notice shall also be given, by publication in some newspaper of general circulation, printed and published in the proper county, if any such paper be printed and published therein. Said elections shall be conducted in all respects as other township elections; and it

Duty of inspector and judges of elections, and auditor.

is hereby made the duty of the inspectors and judges of the elections to certify to the county auditor of the proper county, the person receiving the highest number of votes given in their proper township, and said auditor shall give to the person so elected a certificate of his election. And it is made the duty of the county auditor to furnish the several township assessors with a sufficient number of blanks to take down the taxable property in their respective townships.

Assessor's bond and oath of office.

SEC. 66. Each township assessor, previous to entering upon the discharge of the duties of his office, shall give bond with good and sufficient security, to the acceptance of the board doing connty business, in term, or of the county auditor in vacation, in the penal sum of one thousand dollars, payable to the State of Indiana, and conditioned for the faithful and impartial discharge of the duties of his office according to law, and shall take and subscribe an oath or affirmation, to be endorsed on his bond, that he will faithfully and impartially discharge the duties of his office to the best of his skill and ability; and the bond so endorsed, shall be deposited with the county auditor, and by him carefully preserved; and said auditor is hereby authorized to administer the oath of office aforesaid.

On failure to qualify, auditor may appoint.

SEC. 67. If any township assessor shall not give bond and security, or shall not take the oath or affirmation, as required in the preceding section, on or before the second Monday in

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December next after his election, his office shall [be] considered vacant, and the county auditor shall then fill such vacancy by appointment, which appointment and the proceedings thereon, he shall lay before the board doing county business, at their next meeting thereafter; and should any vacancy occur, by death, resignation or otherwise, the same shall be filled as provided in this section.

Appointee to give bond and take oath.

SEC. 68. Whenever such vacancy or vacancies occur, and are filled as hereinbefore provided, the person so appointed to fill such vacancy shall give bond and take the oath or affirmation as provided in the preceding section.

Penalty for neglect of duty.

SEC. 69. If any assessor shall be guilty of neglect of any of the duties prescribed in this act or which may hereafter be prescribed, such assessor shall upon presentment, indictment, or in any mode which may be prescribed by law, be fined in any sum not exceeding one hundred dollars nor less than ten dollars, at the discretion of the jury or court trying the same, for the use of the common schools of the proper county.

Assessor's return, when and how made.

SEC. 70. Each township assessor shall, on or before the first day of June, annually, make out and deliver to the auditor of his county, in tabular form and alphabetical order a list or lists of the names of the several persons, companies or corporations, in whose names any personal property, moneys, credits or other taxables shall have been by him listed in his township; on which list or lists he shall enter separately in appropriate columns, opposite each name, the aggregate value of the several species of personal property and taxables enumerated in the twenty-third section of this act, as attested by the person required to list the same, or as determined by the assessor; making separate lists of persons residing out of any incorporated town, and of persons who are residents of an incorporated town; the columns shall be accurately added up; and in every case where any person whose duty it is made to list any personal property or other taxables for taxation, shall have refused to make out and return to such assessor the lists of personal property and taxables enumerated in the twenty-third section of this act, the assessor shall enter, in an appropriate column the words "refused to list;" and in every case where the person required to list personal property for taxation shall refuse to take and subscribe the oath or affirmation required of him by this act, in regard to the truth of his statement, the assessor shall enter, in an appropriate column, the words "refused to swear;" and in every case where any person required to list property for taxation shall have been absent, or unable from sickness, to list the same, the assessor shall enter opposite his name, the word "absent," or "sick."

Shall also deliver original lists.

SEC. 71. Each township assessor shall, at the time he is required by this act, to make return of taxable property to the county auditor, also deliver to him all the statements of

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property which he shall have received from persons required to list the same, arranged in alphabetical order, corresponding with his list or lists; and the auditor shall carefully preserve the same in his office.

Shall list and appraise lands becoming taxable.

SEC. 72. Each township assessor shall annually, (except when the real estate is appraised,) at the time of taking lists of personal property, also take a list of all real estate situate in his county, that shall have become subject to taxation since the last previous listing of property therein, with the value thereof, estimated agreeably to the laws regulating the duties of appraisers of real estate, and all new improvements, buildings or other structures of any kind, the value of which shall not have been previously added to, or included in the valuation of the land on which such improvements have been made, or structures erected, and shall make return thereof to the county auditor, at the same time that he is required by this act to make return of personal property; in which return he shall set forth the parcel of real property on which each of such improvements shall have been made, or structures erected, and the true value added to such parcel of real estate by the making of such improvement, or the erection of such structure, and the additional sum which it is believed the land on which the improvement shall have been made, or structure erected, will sell for at private sale, in consequence thereof, shall be considered the value of such improvement or structure; and in case of destruction by fire, flood, or otherwise, of any improvement, building, or structure of any kind which shall have been made or erected previous to the last valuation of the land on which the same shall have been, and the value of which shall have been added to any former valuation of such land, the assessor shall determine, as nearly as practicable, how much less such land would sell for at private sale in consequence of such destruction; and make return thereof to the county auditor, as in this section before provided in relation to improvements made, and structures erected.

Duty of assessor, county and State Auditor relative to statistics.

SEC. 73. It is hereby made the duty of each and every assessor in this State, in making his returns to the auditor of his county, of the taxables in his township, as provided in this act, to set down in appropriate columns, the number of domestic and farm animals of all kinds, and the quantities in bushels and tons, of farm products of every kind, in his township. It is, also, hereby made the duty of each and every county auditor in this State, without unreasonable delay, after receiving from the township assessor the statements particularly mentioned in this section, to report the same, under appropriate heads, to the Auditor of State. The Auditor of State, in making his annual reports to the General Assembly, shall embody therein a condensed statement, in tabular form, of the matters contained in the reports made to him by the county auditors, as required by this section,

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exhibiting the products of each county and the aggregate for the entire State.

Assessor's oath

SEC. 74. Each assessor shall take an oath or affirmation, which shall be certified by the magistrate or other officer administering the same, and attached to the return which he is required to make to the county auditor, in the following form: I, ———— assessor for ———— county, in the State of Indiana, do solemnly swear (or affirm) that the value of all personal property, moneys, credits, and other assessables, of which a statement has been made, and attested by oath or affirmation of the person required by law to list the same, is truly returned, as set forth in such statement; that in every case where by law I have been required to ascertain the amount and value of personal property and assessables of any person, company or corporation, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value of such personal property and assessables; and that, as I verily believe, the full value thereof, so ascertained by me, and estimated by the rules prescribed by law, is set forth in the annexed return; that in no case have I knowingly omitted to demand a statement of the description and value of personal property or of the amount of moneys and credits, or of the amount and value of corporation or other stocks, bonds or other assessables, which any person is required by law to list; nor have I in any way connived at any violation or evasion of any of the requirements of law in relation to listing or valuing personal property, moneys, credits, stocks or other assessables for taxation

Of the duty of county Auditors in making out tax lists and duplicates, and assessing taxes.

Duplicate.

SEC. 75. The auditor of each county shall, annually, between the first Monday of June and the fifteenth of October, make out a duplicate list of taxes assessed in each county, according to the forms which shall be furnished by the Auditor of State; and, in so doing, he shall enter in separate columns —first, all lands in each civil township, with the names of the owners in alphabetical order, the value of the land without improvements, and opposite to this, the value of the improvements; and opposite to this, the value of such land with improvements; secondly, in like order, he shall enter all town in-lots and out-lots situate in such township, with the improvements thereon; thirdly, in its place, all corporation stock, (except stocks of the State Bank;) fourthly, all personal property subject to taxation, and which shall be charged, together with the poll tax, in the civil township where the owner resides; fifthly, he shall number each original township in regular progression as the same shall stand entered on his duplicate, and the same township shall retain the same numbers from year to

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year; and sixthly, he shall number each name in each township in regular progression.

Duty of auditor

SEC. 76. The county auditor making out such duplicate, shall be careful to enter thereon all the lands previously entered for taxation, with the valuation thereof as heretofore assessed; and all such lands as by mistake or neglect shall have been omitted to be entered; also, all such lands as shall be found to have become subject to taxation since the last assessment, with such valuation as shall be affixed thereto by the assessor; and he shall enter the corporation stock and personal property according to the list of the assessor last returned, giving a pertinent description of all property thus entered on his duplicate, and duly enter all transfers of land noted in his office since the last assessment, and carry into effect all alterations which shall be made in the assessors' lists by the board of equalization.

May deduct on account of destruction.

SEC. 77. When any building or personal property listed for taxation, shall be consumed by fire, or otherwise destroyed, the auditor on being satisfied thereof, shall strike the same from his duplicate, or deduct the proper proportion from the valuation of the land or other property with which the same may stand charged on such duplicate.

Shall estimate the amount of tax, &c.

SEC. 78. The county auditor shall estimate in dollars and cents, rejecting fractions of a cent, and set down on such duplicate, in separate columns, the State, county, school and road tax chargeable on the valuation of property contained in such duplicate; also, the amount of taxes on all property returned delinquent for any preceding year and remaining unpaid, and a penalty of ten per centum on the amount of such tax; also, the State and county poll tax; and shall carry out the aggregate amount into a column of totals.

Aggregate.

SEC. 79. He shall add up and set down on each page of such duplicate, the several columns containing the valuations of real and personal estate, taxes charged, and the number of acres, carrying the same forward from page to page to the close of each township; and at the end of the duplicate, he shall recapitulate the several townships and add up and set down the aggregate of the above items for the whole county.

Auditor to furnish treasurer copy of duplicate.

SEC. 80. He shall cause a copy of such duplicate to be delivered to the treasurer of his county, on or before the fifteenth day of October, in each year.

Shall certify abstract to Auditor of State.

SEC. 81. He shall also make out and cause to be transmitted to the Auditor of State, on or before the first day of November, in each year, a complete abstract of all the property listed in each township, the valuation thereof, the number of polls, the amount of each kind of tax, and the aggregate thereof in the county, and certify the same; as also the rate of each kind of tax assessed.

Shall correct duplicate.

SEC. 82. He shall, from time to time correct all errors which he may discover in his duplicate, either in the name of

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the person charged with taxes, the description of the property, or the amount of tax charged, and when such correction is made after the duplicate shall have been delivered to the treasurer for collection, the auditor shall give to the person benefited thereby, a certificate of such correction, to be presented to the treasurer, who shall make the like correction on his duplicate, and keep such certificate as his voucher on settlement with the auditor.

Penalty for refusal to list or swear.

SEC. 83. Each county auditor shall add to the value, as returned by the assessor, of all personal property and of all moneys, rights, credits, effects and stocks which the owner or other person in behalf of the owner, whose duty it is made by this act to list the same, has refused to list, or to the value of which such person shall have refused to swear when required so to do, in obedience to the provisions of this act, fifty per centum on the value so returned by the assessor.

Person sick or absent may give in list any time before assessment.

SEC. 84. If any person required to list property for taxation, shall have been prevented, by sickness or absence, from making and delivering to the assessor such statement, such person, or his agent, having charge of such property, may at any time before the assessment of taxes thereon by the county auditor, make out and attest, on oath or affirmation before the county auditor who is hereby authorized to administer the same, a sworn statement as required by this act, and also make out the second statement as required by this act; and the county auditor shall, in such case, make an entry thereof on the return for the proper township, and correct the corresponding item or items in the returns made by the assessor, as the case may require; but no such statement shall be received by the county auditor from any person who shall have refused to make out such statements, in the manner required by this act and deliver the same to the assessor within the time required by this act, nor from any person, unless he shall make and file with the county auditor an affidavit that the person required by this act to list the same, was absent from his township without design to avoid the listing of his property, or was prevented by sickness from making out and delivering to the assessor the required statements within the time prescribed by law.

Real estate omitted, &c.

SEC. 85. If from a careful examination of the returns made by the assessor, the auditor shall discover any tract of land, town lot, or part of either, in his county shall have been omitted in the returns of such assessor, he shall add the same to his list of real property, with the name of the owner, and shall forthwith notify the assessor in whose returns such omission occurred, thereof, and such assessor shall forthwith proceed to ascertain, and return to the county auditor, the value of the tract or lot, or part thereof, so omitted; or the auditor may himself ascertain the value of such tract or lot or part thereof, and add the same to the list of real property.

Incorrect statement and returns to be corrected.

SEC. 86. The county auditor, if he shall have reason to believe, or be informed, that any person has given to the asses-

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sor a false or incorrect statement of his personal property, moneys, rights, credits, effects or stocks, or that the assessor has not returned the full value of any such assessables, required to be listed in his township, or has omitted, or made an erroneous return of any such assessables, shall proceed, at any time before the final settlement with the county treasurer, to correct the duplicate and to charge such person with the proper amount of taxes thereon; to enable him to do which, he shall be invested with all the powers conferred on assessors by this act; and it shall be the duty of the auditor in all such cases, before making the entry upon the duplicate, to notify such person that he may have an opportunity of showing that his statement, or the return of the assessor, was correct; and the county auditor shall, in all such cases, file in his office a statement of the facts or evidence upon which he made such correction; but he shall in no case reduce the amount returned by the assessor, without the written assent of the Auditor of State, given on a statement of facts submitted by the county auditor.

Delinquent list.

SEC. 87. County auditors shall not publish in the list of delinquent or forfeited lands, any tract or lot upon which the taxes due shall not be more than double the cost of publishing such tract or lot; but such tract or lot shall be retained upon the duplicate until the taxes due thereon shall be more than double the cost of publishing the same in the list of delinquent or forfeited lands.

Counties without auditor.

SEC. 88. Whenever the county auditor is required by this act to perform any duty, the same shall be understood and taken to mean and include, in those counties where there is no county auditor, the clerk, or other person who performs the duty of county auditor.

Personal property omitted.

SEC. 89. If any county auditor, upon receiving the returns of any assessor, shall be satisfied that such assessor has omitted any personal property, moneys, rights, credits, effects or stocks, in his township, which it was his duty to return, such auditor may, if he deem it expedient, authorize and require such assessor to proceed to correct any error or omission, which may have occurred, as aforesaid; and, in such case, such assessor shall within ten days after being so required and authorized, proceed to correct such errors and omissions, and make return thereof to such county auditor; but nothing herein contained shall [authorize] any assessor to reduce the amount assessed against any person in his former return; and such county auditor shall charge such person with the additional amount, if any, returned by such assessor.

Blank lists, &c.

SEC. 90. The several county auditors in this State shall, on or before the first day of January in each year, cause to be printed, at the expense of their respective counties, a sufficient number of blank lists, forms and instructions, required by this act, [or] by the Auditor of State, and shall deliver the same to the township assessors.

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Board of equalization.

SEC. 91. The board of county commissioners, auditor, and assessors, shall meet at the seat of justice of each county, on the first Monday of June, annually, and shall constitute a board of equalization, who shall have power to hear and determine the complaint of any owner of personal property, moneys, rights, credits, effects or stocks, or poll listed, respecting the same, and the valuation of any such property or taxables, made subsequent to the preceding first day of January, and shall correct any list or valuation as they may deem proper, and shall have power to equalize the valuation made by the assessors, either by adding to or deducting from their valuation, such sums as to them, or a majority of them, shall appear just and equitable.

Release when tax has been paid.

SEC. 92. If any person who has been assessed with personal property out of this State, shall satisfy the auditor of the county where such assessment is made, by his own affidavit and such other evidence as such auditor may require, that he has paid a tax on such property for the current year, in any other State in the Union, such auditor shall release such property from taxation.

Of the manner of collecting taxes, and the duties of the county auditor and treasurer therein.

Duplicate.

SEC. 93. The county treasurer shall receive from the county auditor the duplicate of taxes whenever presented between the first Monday in June and the fifteenth day of October.

Collection.

SEC. 94. Immediately on receiving such duplicate, he shall proceed to collect the same, and for that purpose shall, between the fifteenth day of October and the fifteenth day of November, attend at the place of holding elections in each township for the space of one day, and as much longer as the board of county commissioners shall direct, and after the fifteenth day of November until the third Monday of March he shall, for the same purpose, attend at his office at the seat of justice.

Notice.

SEC. 95. He shall forthwith cause notices to be posted up in three public places in each township throughout his county, one of which shall be at the place of holding elections in each township, and also cause the same to be published in some newspaper having general circulation in his county, (if any there be,) for six successive weeks, stating in such notices the amount of tax charged for State, county, school, road, or other purposes on each one hundred dollars valuation; also, the amount of State and county poll tax; also, on what day he will attend at the place of holding elections in each township, for the purpose of receiving taxes.

Damages for failure to pay

SEC. 96. In case any person shall refuse or neglect to pay the tax imposed on him, the county treasurer shall, after the third Monday of March, levy the same, together with ten

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per centum damages, and the costs and charges that may accrue, by distress and sale of the goods and chattels of such person who ought to pay the same, wheresoever the same may be found within the county.

Notice of sale. SEC. 97. The treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the day of sale, by advertisements to be posted up in at least three public places in the township where such sale shall be made.

Sale. SEC. 98. Such sale shall be by public auction, and no more property shall be sold than sufficient to pay the tax, costs and charges; if convenient, to be sold in parcels, and if sold for more than the amount necessary the surplus shall be returned to the owner of such property.

Fees, &c. SEC. 99. The treasurer shall be allowed the same fees and charges, except mileage, for making distress and sale of goods and chattels for the payment of taxes, as may be allowed by law to constables for making levy and sale of property on execution.

Removal without payment. SEC. 100. In case the treasurer shall have cause to fear that any person charged with tax is about to remove from the county without payment of his tax, he may, at any time before the third Monday of March, in like manner levy such tax, costs and charges, by distress and sale.

Power to collect. SEC. 101. The power to levy and collect shall continue in such treasurer after his return and settlement with the county auditor, until the taxes shall be paid, should goods or chattels of the delinquent be found within his county.

Delinquency after settlement with Auditor of State. SEC. 102. The several county treasurers be and they are hereby required, immediately after their annual settlement with the Auditor of State, either in person or by deputy to call upon every delinquent tax payer in their respective counties, and if necessary, to distrain property for the collection of such delinquent tax, together with penalty and interest.

Schedule of delinquent taxes. SEC. 103. The said treasurers shall, annually, on the first Monday of August, file with the auditors of their respective counties, schedules of all such delinquent taxes collected by them, verified by their oaths or affirmations, and shall receipt to said auditors for the amount collected for county purposes, and shall pay the amount collected for State purposes into the treasury of the State, or deposit the same to the credit of the Treasurer of State in the nearest bank, if so directed by the said Treasurer of State; and it shall be the duty of such county auditors to forward certified copies of such schedules, forthwith, to the Auditor of State.

Treasurer's allowance, &c. SEC. 104. The said treasurers shall be allowed for their services in making such collections, eight per centum on the amount of all such collections of delinquent taxes, payable in just proportion out of each fund collected, and shall also be allowed constable fees and mileage from the place of hold-

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ing elections in each township to the residence of such delinquent tax payer, which shall be collected from such tax payer.

Treasurer paying taxes may collect personally.

SEC. 105. Whenever any county treasurer or collector for any previous year, shall have charged himself with, and accounted for, any tax that shall not have been paid to him, such tax shall be deemed and taken as due him personally, whether in or out of office, and may be by him collected in the same way as other taxes due and unpaid are collected.

Delinquent removed.

SEC. 106. That whenever any person shall be returned by a county treasurer to the county auditor as delinquent for the non-payment of taxes, and such person shall have removed from the county in which he was assessed to any other county in this State, it shall be the duty of the said treasurer, in making such return, to write opposite the name of such person the words "removed from this county," stating also the name of the county to which such person shall have removed, if known to such treasurer.

Account to be transmitted.

SEC. 107. It shall be the duty of the county auditor, whenever he shall be advised, by the return of the treasurer, or by any other means, that any delinquent tax payer has removed as aforesaid, if such auditor shall be satisfied that there is a reasonable prospect of collecting said taxes, to make out a list of the taxes owing by such person, specifying therein what is State, and what are county, school, and road taxes; which list shall be certified to be correct, under the hand and seal of such auditor, and the said auditor shall transmit the said list to the auditor of the county to which such person shall have removed; and the said county auditor for making out and transmitting the said statement, shall be entitled to the sum of fifty cents, and the county treasurer is required to collect the same from such delinquent tax payer.

How collected.

SEC. 108. The county auditor to whom such list shall be sent, shall immediately enter the same on his tax duplicate, and charge the treasurer of his county with the amount, and instruct him to collect the same.

Collection.

SEC. 109. The said county treasurer shall proceed to collect the said taxes, interest, damages and fees; and in so doing, he shall be governed by the provisions of this act, and the laws in force regulating the duties of county treasurers; and when the same is collected, the county treasurer shall pay the same into the State Treasury; the county, school, and road tax and fees shall be entered to the credit of the county entitled to the same, and the Treasurer of State shall pay the same over to the proper county treasurer.

Fees.

SEC. 110. The auditor and treasurer of the county to which such statement shall have been sent, shall be allowed the same fees as they are now allowed, or may hereafter be allowed for similar services.

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Partial payment.

SEC. 111. The treasurer shall receive the tax on a part of any real estate charged with taxes, provided the person paying such tax shall furnish a particular specification of such part, and shall pay a like proportion of all the several taxes charged thereon for State, county, road, or other purposes; and if the tax on the remainder of such real estate shall remain unpaid, the treasurer shall enter such specification on his return to the county auditor, to the end that the part on which the tax remains unpaid may be clearly known; but such payment shall not discharge any lien of the State as provided for in the 112th and 113th sections of this act.

State's lien for taxes.

SEC. 112. The lien of the State for all taxes for State, county, school, road, or township purposes, shall attach on all real estate on the first day of January, annually; and such lien shall be perpetual for all taxes due from the owner thereof, which have heretofore accrued, or shall hereafter accrue, with the interest and penalties in each case, until payment; which lien shall in no wise be affected or destroyed by any sale or transfer of any such real estate.

All property liable for taxes.

SEC. 113. All the property, both real and personal, situate in any county, shall be liable to the payment of all taxes, penalties, interest, and costs charged to the owner thereof, in such county, and no partial payment of any such taxes, penalties, interest, or costs, shall discharge or release any part or portion of such property, until the whole be paid; which lien shall in no wise be affected or destroyed by any sale or transfer of any such personal property.

Partial payment discharges property paid on if other property is found.

SEC. 114. If any such partial payment be made, and the payer desires it to be applied on any particular property, real or personal, the property so designated shall not be sold for the residue of the taxes due, if property of the same description can be found sufficient to make the balance due.

Penalty for delinquency.

SEC. 115. There shall be a penalty assessed of ten per cent. upon the amount of taxes returned delinquent, which the persons or property assessed shall be liable to pay, together with interest upon the whole amount until paid.

Treasurer to note payment and give receipt.

SEC. 116. Whenever any tax is paid, the treasurer shall note the same on his duplicate, and shall give to the person paying the same a receipt, specifying the amount paid, what paid for, and the property on which the same was assessed, according to its description, and the number of the owner's name on the duplicate.

Shall guarantee to purchaser that tax has not been paid.

SEC. 117. It is hereby made the duty of the county treasurer, at the time he sells lands as for taxes unpaid and delinquent, as is directed in this act, and after the purchasers of lands under such sales shall have made payment of the amount of their bids, respectively, to endorse upon or annex to each certificate to be given to the purchaser by the county auditor, as required in this act, his written guaranty, signed by him, warranting that the taxes due upon the tract or tracts, lot or lots, piece or parcel of land, which, or a por-

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tion of which, are named upon such certificate, for the years for which the same shall have been returned delinquent, have never been paid by the owner nor by any person on his behalf, and that the same were yet due and unpaid at the time of the sale thereof named in such certificate. And if it should at any time appear that such county treasurer had, before the time of making such guaranty, received, either in person or by deputy, the said taxes assessed against such tract or tracts, lot or lots, piece or parcel of land, the holder of such certificate is entitled to his action upon such written guaranty aforesaid, forthwith upon the fact becoming known that such lands were improperly sold, and without awaiting the accrual of any special damage to such holder; and, in such action, the measure of damages to which such holder of such certificate is entitled, is double the amount paid by such holder, as taxes, interest, penalty and charges, with lawful interest thereon; or, such holder is entitled to his action on the official bond of such treasurer, against him and his sureties, as for dereliction in duty, in which action the measure of damages is the same as above mentioned.

Action against treasurer for failure to credit payment.

SEC. 118. If any county treasurer shall fail to give proper credit for any taxes paid to him, whereby the owner of any tract, lot, parcel or piece of land may be deprived of his title thereto or to some portion thereof, or whereby such title may be jeopardized by proceedings under this act, or any acts amendatory hereof, such failure shall be held as a dereliction of duty; and the said owner or his legal representatives may, in an action against such treasurer, or upon his official bond, recover a judgment for double the amount of all the damages, costs, and charges to which such owner may have been subjected in consequence of such failure.

Action for sale in case of double assessment.

SEC. 119. Whenever any tract, parcel or lot of land shall have been assessed to two different persons, and the entire tax shall have been paid by either of them, if the treasurer shall sell such land as delinquent on account of the non-payment, by the other party, of the taxes assessed against him thereon, such sale shall be held to be a dereliction of duty; and the party damnified by such sale, shall have his right of action against such treasurer, personally, or on his official bond, and in such action the measure of damages shall be the same as prescribed in the preceding section.

County board to credit treasurer for over payment.

SEC. 120. Whenever it shall appear to the board doing county business in any of the counties of this State, that by reason of erroneous charges on the tax duplicate, or from any other cause, the treasurer of such county has paid and accounted to said board for more money than was justly due from him on account of county revenue, said board doing county business shall direct the auditor to credit said treasurer with the sum or sums thus improperly paid, and order the same to be refunded from the county treasury.

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Shall direct auditor to certify erroneous payment, to Auditor of State.

SEC. 121. Whenever similar improper or erroneous payments have been made by any county treasurer to the State Treasury, the board doing county business shall direct the auditor to certify said improper or erroneous payments to the Auditor of State, under his seal of office, who shall audit and allow the same as a claim against the treasury, and the treasurer shall pay the same out of any moneys not otherwise appropriated.

Explanation.

SEC. 122. The provisions of the two preceding sections shall extend to persons who have been, as well as those who are now, and shall hereafter be, county treasurers.

Of the settlement and payments to be made by the County Treasurers, and the duty of the Auditors and other officers therein.

Annual settlement.

SEC. 123. The county auditor and treasurer shall attend at the office of said auditor on the third Monday in March, annually, and the treasurer shall then and there make settlement with the auditor for the amount of taxes for whcih said treasurer is to stand charged, as follows:

First. The auditor shall take from the duplicate in the hands of the treasurer, for collection, a list of all such taxes as said treasurer shall have been unable to collect, therein describing the property on which such delinquent taxes are charged, as the same property is described on such duplicate, and shall note therein, in a marginal column, the reasons assigned by such treasurer why such taxes could not be collected.

Second. Such list shall be signed by the treasurer, and he shall also testify to the correctness thereof, under oath or affirmation, to be administered by the auditor.

Third. The auditor shall forthwith record such list of delinquencies in his office, and deliver the same to the treasurer, who shall deliver the same to the Auditor of State at the time he makes settlement with him as hereinafter required.

Fourth. In making such delinquent list, the delinquencies of each township shall be kept separate and distinct.

Fifth. After deducting the amount of taxes so returned delinquent, and the collection fees allowed the treasurer, from the several taxes charged on the duplicate, in a just and rateable proportion, the treasurer shall be held liable for the balance.

Sixth. The auditor shall certify, in such manner as the Auditor of State shall direct, the balance due to the State, the balance due to the county, the balance due for road purposes, and the balance due to the townships or school districts therein; which certificate he shall deliver to the treasurer, who shall deliver the same to the Auditor of State, at the time he makes settlement with him, as hereinafter provided.

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Settlement with State Treasurer.

SEC. 124. Each county treasurer shall, on or before the second Monday of April in each year, pay over to the State Treasurer all the moneys found due for State revenue, according to the certificate of settlement with the auditor of his county, deducting therefrom his travelling fees, and shall take a receipt from the State Treasurer for the money so paid, which he shall deposit with the Auditor of State, who shall give him a quietus.

County revenue

SEC. 125. The revenue collected for county, road and other purposes, shall be paid over, and settlement therefor made, as may be provided in the several acts and sections relating thereto, and to the duties of the county auditors and treasurers.

Treasurer failing to settle, he and his sureties liable.

SEC. 126. If any county treasurer shall refuse or neglect to make return or settlement with the auditor of his county, as in this act required, he and his sureties shall be held liable to pay the full amount of the taxes charged on the duplicate, respecting which he so refuses or neglects to make return or settlement, together with interest from the time when such return or settlement should have been made, and ten per centum damages.

On failure to pay, he and sureties liable.

SEC. 127. If any such county treasurer shall refuse or neglect to pay over all moneys, as provided herein, he and his sureties shall be held liable to pay the full amount which he should have paid over, together with interest and ten per centum damages.

Suit.

SEC. 128. In any such case, the county auditor, on being instructed to that effect by the Auditor of State, or by the board of county commissioners, shall cause suit to be instituted against such county treasurer and his sureties; and no stay of execution or appraisement of property shall be allowed on a judgment rendered or execution issued in such suit.

Continuance.

SEC. 129. No such suit shall be continued (without the consent of the attorney prosecuting the same) for want of service of process on all the defendants; but judgment may be rendered against the defendants on whom process has been duly executed; and by appropriate process, the other defendants may be made parties to such judgment at any subsequent term of the court in which such judgment shall have been rendered.

Acc't against treasurer evidence of demand.

SEC. 130. The stated account of the treasurer against whom suit is brought, certified by the Auditor of State, as truly transcribed from the account current against such treasurer on the books of said Auditor's office, authenticated by the State seal, shall be conclusive evidence of the demand of the State against such treasurer and his sureties.

Payment, &c., not to be allowed before trial.

SEC. 131. No payment, set off, or claim of credit shall be allowed in any such suit, in favor of the treasurer or his sureties, unless the same shall have first been presented to the Auditor of State, and allowed or rejected by him, unless

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the same could not, by using due diligence, have been so presented for his determination thereon, before the trial of such suit.

Auditor shall be witness.

SEC. 132. In all suits brought against any county treasurer and his sureties, the county auditor shall be a competent witness, and all books and papers belonging to his office shall, when proved by the oath of the auditor, be admissible testimony.

Sheriff to pay into county and State Treasury.

SEC. 133. The sheriff or other officer who shall collect any money from a delinquent county treasurer or his sureties, shall, within ten days after the collection thereof, pay into the county treasury such portion thereof as shall belong to the county, and within thirty days after such collection shall pay into the State treasury the portion belonging to the State, retaining the same travelling fees allowed by law to the county treasurers; or, he shall pay the same over in such other manner as the Auditor of State may direct.

Sheriff failing to pay, he and sureties liable.

SEC. 134. If any sheriff, or other officer to whom execution against a delinquent treasurer or his sureties shall be delivered, shall neglect or refuse to execute the same, or shall neglect or refuse to pay over any money collected thereon, he and his sureties shall be liable to the same penalties, and be proceeded against in the same manner, and subject to the same disabilities as herein provided in relation to delinquent treasurers and their sureties.

Deputy treasurer.

SEC. 135. If any deputy treasurer shall fail or refuse to pay over to his principal, on demand, any taxes or other money by him collected as deputy treasurer, the same proceedings may be had, and penalties recovered, against him and his sureties, as herein provided against delinquent treasurers and their sureties.

Of the proceedings relating to delinquent taxes, sales and conveyances of lands therefor, and redemption thereof.

Delinquent taxes may be paid before sale.

SEC. 136. Delinquent taxes may at any time before land is sold therefor, with the penalty, interest, and costs thereon, be paid as follows:

First. Into the county treasury at any time.

Second. Into the State Treasury at any time after the return of the delinquent list to the Auditor of State, until the third Monday of September, annually.

Receipt.

SEC. 137. In case of such payment into the county treasury, the person paying shall file the treasurer's receipt with the county auditor, and take his receipt in place thereof.

Receipt for payment into State Treasury.

SEC. 138. In case of such payment into the State Treasury, the person paying shall file the Treasurer's receipt with the Auditor of State, and take his receipt therefor, which he shall file with the treasurer of the proper county.

Sale after payment, when valid.

SEC. 139. Any levy or sale of property for delinquent taxes, made after such payment into the State Treasury, shall be

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valid, if made before the filing of such receipt with the county treasurer; but after the filing of such receipt, proceedings on such levy shall be stayed, on payment of costs and charges; or if property shall have been sold, the owner shall be entitled to a return of the proceeds, after deducting costs and charges.

State Auditor to credit treasurer with portion due county.

SEC. 140. The portion belonging to any county, of such payments made into the State Treasury, shall be certified to the county auditor by the State Auditor, and be allowed in settlement with the county treasurer for State revenue due from such county for the current year.

Portion due State.

SEC. 141. The portion belonging to the State, of such payments made into the county treasury, shall be certified to the Auditor of State by the county auditor, and paid to the State Treasurer by the county treasurer, at the time and in the manner provided for certifying and paying over State revenue.

Delinquent list.

SEC. 142. Between the first and fifteenth days of November, annually, the county auditor shall make out and record, in a book to be provided for that purpose, a list of all lands returned and remaining delinquent for taxes, describing such lands as the same are dscribed in the tax duplicate, and charging them with the amount of delinquent tax, with interest, and a penalty of ten per centum on such taxes, also with the taxes of the current year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same officially.

Publication and notice of sale.

SEC. 143. He shall cause a copy of such list to be immediately published, for four weeks successively, once in each week, in some newspaper having general circulation in his county, if any there be, or he may have the same printed in handbill form, if the same can be done cheaper than to publish the same in a newspaper; otherwise by three copies posted up in public places in each township of his county, to which shall be attached, and in like manner published, a notice that so much of said lands as may be necessary to discharge the taxes, interest, and charges which may be due thereon or due from the owner thereof at the time of sale, will be sold at public auction, at the court house in such county, on the first Monday in January next thereafter.

Certificate of publication.

SEC. 144. The county auditor shall, on or before the day of sale, insert at the foot of such list on his record, a copy of such notice, and certify on said record immediately following such notice, the manner in which the same was published, giving the name of the paper in which the same was published, and the length of time during which it appeared.

Sale.

SEC. 145. On the day mentioned in the notices, the county treasurer shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel assessed, or belonging to each person assessed, shall be sold as will pay the taxes, interest and charges thereon, or chargeable to such person in said county.

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Purchaser.

SEC. 146. The person offering at said sale to pay the required sum for the least quantity of any tract, shall be considered purchaser of such quantity.

Each tract to be sold for the payment of the whole.

SEC. 147. When more than one tract belonging to the same person, shall be for sale, at the same time, in the same county, each such tract as offered, shall be for the payment of the whole sum due from such owner on all such delinquent lands or otherwise; and if no person shall bid off a part or the whole of such tract for the sum required, the said tract shall then be offered to the highest bidder, and if any amount shall yet remain due, the other tracts shall be proceeded with in like manner, until the required sum shall be realized.

Part sold, how laid out.

SEC. 148. When less than the whole of any tract of land shall be sold, the quantity sold shall be taken off and laid out in a square form, as near as practicable, at the most northwesterly corner of the tract; and when less than the whole of any in-lot or out-lot of any town shall be sold, the part sold shall be taken off and laid out, so that it shall extend from the main or principal street, road or alley, forming the most convenient front to such lot, to the rear of such lot, and to bound the same by lines as nearly parallel with the out-lines of such lot as practicable.

Purchaser failing to pay, land to be re-offered, &c.

SEC. 149. The purchasers at such sale shall immediately pay the amount of their respective bids to the treasurer; or on their failure so to do, the land shall be again forthwith offered for sale, the same as if no sale had been made; and the purchasers so failing, shall forfeit and pay, for the use of the common school fund of the county, a penalty of twenty-five per centum on the amount of their bids, to be recovered by action of debt, in the name of the treasurer, before any justice of the peace or court having jurisdiction thereof.

Auditor to be clerk of sale.

SEC. 150. The county auditor shall attend as the clerk of the sales of such delinquent lands, and shall enter the same on a sufficient record book, giving a description of the proper tract or lot, showing how much of each was sold, to whom, and the price, or whether the same remain unsold; a certified copy of which he shall send to the Auditor of State by the county treasurer, at the time such treasurer shall make his annual payment of State revenue.

Certificate of purchase.

SEC. 151. After payment shall have been made, the county auditor shall give to the purchaser a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed; which certificate shall entitle the holder to the possession of the premises therein described.

Certificate assignable.

SEC. 152. The said certificate shall be assignable; but no assignment thereof shall be valid unless acknowledged before some justice of the peace or the proper county auditor, and recorded in such auditor's office.

Land, how redeemable.

SEC. 153. The owner or occupant of any land sold for taxes, or any other person, may redeem the same at any time

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within two years after the last day of such sale, by paying to the county treasurer, for the use of the purchaser, his heirs, or assigns, the sum mentioned in his certificate, and the amount of all subsequent taxes paid, with fifty per centum on the whole sum, and interest from the date of purchase or from the time of payment.

Infants, &c., may redeem.

SEC. 154. Infants, idiots, femes covert, and insane persons, may redeem any lands belonging to them, sold for taxes, within two years after the expiration of such disability.

Persons redeeming to pay for improvements.

SEC. 155. In case any lasting and valuable improvements shall have been made by the purchaser at a sale for taxes, or by any person claiming under him, and the land on which the same shall have been made shall be redeemed as aforesaid, the premises shall not be restored to the person redeeming until he shall have paid or tendered to the adverse party the value of such improvements; and if the parties cannot agree on the value thereof, the same proceedings shall be had in relation thereto as shall be prescribed in the law existing at the time of such proceedings for the relief of occupying claimants of land.

No compensation for improvements.

SEC. 156. No compensation shall be allowed for improvements made before the expiration of two years from the date of the sale for taxes.

Claimant of part of land may redeem.

SEC. 157. Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, penalty, and subsequent taxes, as he shall claim of the land sold.

Claimants of undivided share &c., may redeem.

SEC. 158. Any person claiming an undivided share in any land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying such portion of the purchase money, interest, penalty, and subsequent taxes as he claims of the lands sold.

Claimants of specific part may redeem.

SEC. 159. Any person claiming a specific part of any lands sold for taxes, may redeem his specific part by paying such proportion of the purchase money, interest, penalty, and subsequent taxes as his quantity of ground shall bear to the whole quantity sold.

Undivided part of specific part redeemable.

SEC. 160. Any person claiming a specific part of any lands, out of which an undivided part shall have been sold for taxes charged on the whole tract or lot, may redeem his specific part by paying such proportion of purchase money, interest, penalty, and subsequent taxes, as his quantity of acres shall bear to the whole quantity taxed.

Claimant of specific part out of which specific part belong to another is sold, may exonerate himself.

SEC. 161. Any person claiming a specific part of any lands, out of which a specific part belonging to some other person shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying into the county treasury, at any time before the expiration of the time allowed for redemption, such proportion of purchase money, penalty and interest, as his quantity of acres will

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bear to the whole quantity taxed; and such payment shall operate as a redemption of a proportionate part, according to the amount paid, of the land sold.

Quantity sold reduced in proportion to amount paid.

SEC. 162. In every case of a partial redemption, pursuant to either of the last five sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county auditor shall convey accordingly.

Lands sold for taxes assessed conjointly, &c.

SEC. 163. Whenever the lands of any one person shall be sold for taxes assessed conjointly on the lands of such person, and the lands of another person, [and] such other person shall not pay his due proportion, the person whose lands shall be sold may redeem the same, on paying the amount due to the purchaser; and he shall be entitled to recover from such other person whose lands were assessed with his, a just proportion of the redemption money so paid, with lawful interest from the time of such redemption; but no suit shall be brought for the recovery of such proportion until after the expiration of the time allowed for redemption.

If land is not redeemed, owner may recover.

SEC. 164. If such owner shall not redeem the land sold, and the same shall be conveyed by the county auditor, such owner may recover from such other person the same proportion of the value of the land sold and conveyed, that he ought to have paid of the tax, interest and charges, for which the land shall have been sold.

Priority of judgment.

SEC. 165. Every judgement obtained under either of the two last sections, shall have priority as against the lands of the defendant therein, on which the tax was assessed, and for which such proportionate part ought to have been paid, to all mortgages executed, and all judgments recovered since the time when such taxes were assessed.

Land not redeemed, auditor shall execute deed.

SEC. 166. If no person shall redeem such lands within two years, at the expiration thereof, and on production of the certificate of purchase, and in case the certificate covers only a part of the tract or lot of land, then accompanied with a survey of such part, made by the county surveyor, the auditor of the county in which the sale of such lands took place, shall execute to the purchaser, his heirs or assigns, in the name of the State, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however, to all the claims which the State may have thereon for taxes, or other liens or incumbrances.

Two or more tracts to be included in one deed.

SEC. 167. When two or more parcels, tracts or lots of land, are sold [for the] non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall in any wise become the owners of the certificate thereof, all of such parcels shall be included in one deed.

Execution and force of deed.

SEC. 168. Such conveyance shall be executed by the county auditor, under his hand and seal, and the execution thereof shall be witnessed by the county treasurer, and such deed shall be conclusive evidence of the truth of all the facts therein recited, with the exception of the fact that the pay-

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ment of the taxes for which the lands named therein were sold, had not been made by or on behalf of the proper owner of such lands in due time, and to the proper officer; of which last named fact such deed shall be held as prima facie evidence, and no more, and such deed shall be in the following form as nearly as the nature of the case will admit, namely:

Whereas, A. B. did, on the —— day of ———, 18—, pro- Deed.
duce to the undersigned, C. D. auditor of the county of ——, in the State of Indiana, a certificate of purchase in writing, bearing date the —— day of ———, 18—, signed by E. F., who, at the last mentioned date was auditor of said county, from which it appears that the said A. B. did, on the ——— day of ———18—, purchase at public auction, at the door of the court house in said county, the tract, parcel, or lot of land, lastly in this indenture described, and which lot was sold to ——— for the sum of ——— dollars and ——— cents, being the amount due on the following tracts, or lots of land returned delinquent in the name of G. H., for the non-payment of taxes, costs and charges, for the years ——, namely: [*here set out the lands offered for sale,*] which said lands had been recorded, among other tracts, in the office of said auditor as delinquent for the non-payment of taxes, costs and charges due for the year last aforesaid, and a true copy of said record transmitted to the office of the Auditor of State, in manner and form as prescribed by law, and legal publication made of the sale of said lands on the said—— day of———, 18—; and it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and none of the saving clauses of the —— section of——— applying to this tract or parcel of land, and neither the said G. H., nor any person in his behalf, having paid or tendered the amount due the said A. B., on account of aforesaid purchase, and for taxes by him since paid, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tracts above described that would sell for the amount due thereon for taxes costs and charges as above specified, and it appearing from the records of said connty auditor's office, that the aforesaid lands were legally liable for taxation, and had been duly assessed and properly charged on the duplicate with the taxes for the years ——;

Therefore, this indenture, made this ——— day of ———, 18—, between the State of Indiana, by C. D., auditor of said county, of the first part, and the said A. B. of the second part, witnesseth: That the said party of the first part, for and in consideration of the premises, has granted, bargained and sold unto the said party of the second part, his heirs and assigns, forever, the tract or parcel of land mentioned in said certificate, and described as follows, namely: [*here set*

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out the particular tract or parcel sold,] to have and to hold the said last mentioned tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns, forever; in as full and ample a manner as the said auditor of said county is empowered by law to sell the same. In testimony whereof, the said C. D., auditor of said county of ———, has hereunto set his hand, and affixed the seal of the board of county commissioners, the day and year last above written.

———— [*Auditor's seal.*]

State of Indiana, ——— county, ss:

Before me, the undersigned, ————, in and for said county, this day personally came the above named C. D., auditor of said county, and acknowledged that he signed and sealed the foregoing deed for the uses and purposes therein mentioned. In witness whereof, I have hereunto set my hand and seal this —— day of ———, 18—.

———— [L. S.]

Auditor to vary form.

SEC. 169. In case circumstances should exist requiring any variation from the foregoing form in the recital part thereof, the necessary change shall be made by the county auditor executing such deed; and the same shall not be vitiated by any such change, provided the substance be retained.

Auditor not compelled to include more than five tracts in one deed.

SEC. 170. In making deeds to purchasers of lands sold for taxes, the county auditor shall not be compelled to include more than five distinct tracts or parcels of land in one deed; and in case two or more deeds be made to the same person, the auditor shall be entitled to demand and receive from such person seventy-five cents for the first deed, and fifty cents for each additional one.

Upon discovery of invalidity of sale before conveyance, money to be refunded, &c.

SEC. 171. Whenever the county auditor shall discover, prior to the conveyance of any lands sold for taxes, that the sale was, for any cause whatever, invalid, he shall not convey such lands; but the purchase money and interest thereon, shall be refunded out of the county treasury to the purchaser, his representatives or assigns, on the order of the county auditor; and such land, if originally liable to taxation, and being still delinquent, shall again be placed on the delinquent list, and the amount so refunded, with interest, be collected as in other cases.

Sale or conveyance invalid.

SEC. 172. No sale or conveyance of land for taxes shall be valid, if at the time of being listed such land shall not have been liable to taxation; or if liable, the taxes thereon shall have been paid before sale, and in all such cases, the money paid by the purchaser at such void sale, shall be refunded out of the county treasury, on the order of the county auditor.

If conveyance be invalid, State's lien vests in grantee.

SEC. 173. If any conveyance for taxes shall prove to be invalid, and ineffectual to convey title for any other cause than those enumerated in the preceding section, the lien which the State has on such lands, shall be transferred to

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and vested in the grantee, his heirs and assigns, who shall be entitled to recover from the owner of such land the amount of taxes, interest and penalty, legally due thereon at the time of sale, with interest, together with the amount of all subsequent taxes paid, with interest, and such lands shall be bound for the payment thereof.

Sale not invalid.

SEC. 174. The sale of lands for taxes, shall not be invalid on account of such lands having been listed or charged on the duplicate in any other name than that of the rightful owner.

Auditor may deed lands sold under former law.

SEC. 175. The county auditors are hereby authorized to make deeds for lands in their respective counties, sold for taxes under any former law, where the same remains yet to be done; and the deeds so made shall be good and valid, as if made by the person authorized under any such former law to make them.

Auditor to cancel and file certificates.

Loss of certificate.

SEC. 176. When conveyances are delivered for lands sold for taxes, the certificates therefor shall be cancelled and filed away by the auditor; and in case of the loss of any certificate, on being fully satisfied thereof by due proof, the auditor may execute and deliver the proper conveyance, and file such proof in his office.

Register.

SEC. 177. A register shall be kept by the county auditor, in his office, containing a brief description of the lands by him conveyed on sales for taxes, the name of the person charged therewith, the date of sale, the name of the purchaser, the amount for which sold, the name of the grantee in the deed, and the date of its execution.

Auditor to note date, &c., of redemption.

SEC. 178. When lands sold for taxes, or any portions thereof, shall be redeemed, the county auditor shall insert a memorandum of such redemption, the quantity or description of the portion redeemed, if not the whole, the date thereof, and by whom made, on his record of sales of land for delinquent taxes, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming.

Lands not sold forfeited to State.

SEC. 179. In case sales of any land for taxes shall not be perfected for want of bidders, the same shall be considered as forfeited to the State, to be disposed of as the General Assembly shall hereafter by law direct; and until so disposed of or redeemed, shall be continued on the duplicate, charged with all arrearages for which it was so forfeited, and interest; and shall be annually assessed and charged with all accruing taxes, penalties and interest, as other lands.

To be annually offered for sale.

SEC. 180. Such lands shall be annually offered for sale with, and on the same terms as, other delinquent lands; and until sold for the amount of all arrearages, may be redeemed on payment of the same into the county treasury, by the owner or owners thereof; and such payments shall be proceeded with, and certified as is provided in this act.

Records, &c., to be received as evidence.

SEC. 181. The records made by the county auditors respecting delinquent lands, the manner of advertisement of

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sales thereof, the sales made of the same, and the conveyances thereof executed, and all copies of such records, duly certified to be such by the proper county auditor, under his seal of office, shall be received as prima facie evidence of the facts contained therein.

Regulations concerning the assessment and collection of taxes on individual stock in the State Bank of Indiana.

Individual bank stock.

SEC. 182. The capital stock held and fully paid out by individuals, in the State Bank of Indiana, shall be liable to taxation in the manner hereinafter prescribed.

Directors to furnish Auditor of State with amount.

SEC. 183. By the second Monday in November, annually, the board of directors of each branch of said bank, shall cause to be transmitted to the Auditor of State, and filed in his office, a correct statement of the amount of stock owned and paid out in their respective branches, other than that held by the State; such statement to be certified to be correct by the president and cashier of the respective branches.

Penalty for failure.

SEC. 184. Any branch failing to forward and file in the auditor's office the statement aforesaid, at the time required, shall forfeit and pay to the State the sum of two hundred dollars.

Auditor of State to assess tax.

SEC. 185. Immediately on receiving such statement, the Auditor of State shall proceed to assess upon each branch the amount of taxes due therefrom, according to the laws upon the subject then in force.

Shall notify branches.

SEC. 186. He shall, within ten days after receiving such statement, notify each branch of the amount so assessed, which notice shall be given by filing the same in the office of the cashier of the State Bank. Should any branch fail to transmit the statement above required, the said auditor shall proceed to estimate, from the best sources in his power, the amount of taxable stock in such branch, and shall assess it accordingly, and give the notice required in the preceding section.

Payment.

SEC. 187. The board of directors in each branch shall cause to be paid to the Treasurer of State, the amount of taxes so assessed, by the second Monday in February, and file the Treasurer's receipt therefor with the Auditor of State.

Penalty for failure.

SEC. 188. Any branch failing to pay [as] aforesaid, shall forfeit and pay to the State the sum of five hundred dollars.

Taxes to be paid out of funds, &c.

SEC. 189. Such taxes shall be paid out of the funds of the respective branch banks, and shall be ratably deducted from the dividends of the stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared.

Penalty for delinquency.

SEC. 190. The same penalties and interest shall be charged on the delinquent taxes due from the branches of the State Bank as in other cases.

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Manner of recovery.

SEC. 191. For the recovery of such taxes, penalties, and interest, the same remedies may be had against any delinquent branch of the State Bank, as are provided for other cases in this act.

Auditor of State to cause suit to be brought.

SEC. 192. The Auditor of State shall cause prosecutions to be instituted for the recovery of the penalties aforesaid, and the same when received may be drawn from the State Treasury by warrant from the auditor of the proper county.

Miscellaneous provisions of a general nature.

Treasurer may collect certain taxes for his own use.

SEC. 193. If any county treasurer, on making settlement with the county auditor, shall stand charged with any tax remaining unpaid, and shall not receive a credit therefor in such settlement, such treasurer may collect such tax for his own use, at any time within one year after such settlement, either by distress and sale, as hereinbefore provided, or by action of debt in his own name, before any justice of the peace, or court having jurisdiction.

Auditor of State to furnish forms &c.

SEC. 194. The Auditor of State shall, from time to time, furnish the several county assessors, auditors, and treasurers, with all such forms and instructions as he may wish them to pursue in the performance of the duties required by this act.

Printing and distribution of this act.

SEC. 195. The Auditor of State shall, from time to time, whenever he shall find it necessary, cause to be printed, at the expense of this State, a sufficient number of copies of this act to furnish one copy to each county assessor, treasurer, auditor and commissioner, within this State, and shall transmit to each county auditor a sufficient number for his county. Every county auditor receiving such copies shall immediately distribute the same to the persons entitled thereto.

Sales of lands for road tax.

SEC. 196. All sales of land charged with taxes in arrear, for opening and improving roads within this State, shall be conducted in the manner hereinbefore prescribed; and the owners of the lands sold shall be allowed to redeem within the same time, and on the same conditions.

Certificate, &c. may be recorded.

SEC. 197. Every certificate or conveyance executed by the auditor of any county, in pursuance of the provisions of this chapter, may be recorded in the same manner, and with the like effect, as a deed regularly acknowledged or proved before any officer authorized by law to take the proof and acknowledgment of deeds.

County to pay to State loss by default of officers.

SEC. 198. All losses to the State which may be sustained by the default of the assessor, treasurer, or auditor of any county, in the discharge of the duties imposed in this chapter, shall be chargeable on such county, and the board of county commissioners shall add such losses to the next year's taxes of such county, and cause the same to be paid into the State Treasury.

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Occupant, &c., paying tax may recover.

SEC. 199. When the taxes on any real estate shall have been collected of any occupant or tenant, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover by action, the amount which such person ought to have paid, or to retain the same from any rent due or accruing from him to such person, for the land so taxed.

Property sold for taxes.

SEC. 200. If the real or personal property of any person shall be sold for taxes, and shall produce more than the sum chargeable thereon, the residue shall be paid to the person entitled by law to the same; and if any doubt or dispute shall arise as to the person entitled thereto, the same shall be paid into the county treasury, to remain until the rights of the parties shall be determined by due course of law.

Auditor's fee.

SEC. 201. For every entry and transfer of land for taxation, the county auditor shall be paid by the person requesting such transfer, twelve and one-half cents; and for making a deed for any land sold for taxes, one dollar, to be paid by the person receiving such deed.

Expense of advertising.

SEC. 202. The expense of advertising delinquent lands in public newspapers shall be paid out of the county treasury, and the amount charged to the respective tracts advertised accordingly.

CHAPTER 7.

AN ACT prescribing the powers and duties of Auditor of State.

[APPROVED MAY 27, 1852.]

Auditor shall give bond.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Auditor of State before entering upon the duties of his office shall execute his official bond, for the sum of ten thousand dollars, to be approved by the Governor.

SEC. 2. He shall,

Shall keep accounts.

First. Keep and state all accounts between the State of Indiana and the United States, or any State or territory, or any individual, or public officer of this State, indebted to the State, or entrusted with the collection, disbursement, or management of any moneys, funds, or interest arising therefrom, belonging to the State, of every character and description whatsoever, when the same are derivable from, or payable into the State Treasury.

Shall liquidate accounts and certify balances

Second. Examine and liquidate the accounts of all county treasurers and other collectors and receivers of all State revenues, taxes, tolls, and incomes, levied or collected by any

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act of the General Assembly, and payable into the State Treasury, and certify the amount or balance to the Treasurer of State.

Third. Keep fair, clear, distinct, and separate accounts of all the revenues, and incomes of the State; and also all expenditures, disbursements, and investments thereof, showing the particulars of every expenditure, disbursement and investment. Shall keep account of incomes and expenditures.

Fourth. Examine, adjust, and settle the accounts of all public debtors, for debts due the State Treasury, and require all such persons, or their legal representatives, who may be indebted to the State for moneys received, or otherwise, and who shall not have accounted therefor, to settle their accounts. Shall settle accounts with public debtors.

Fifth. Examine and liquidate the claims of all persons against the State, in cases where provisions for the payment thereof shall have been made by law; and when no such provisions, or an insufficient one, has been made, to examine the claim, and report the facts, with his opinion thereon, to the legislature; and no allowance shall be made to refund moneys from the treasury without his statement either for or against the justice of the claim. Shall examine and pay claims.

Sixth. Institute and prosecute, in the name of the State, all proper suits for the recovery of any debts, moneys or property of the State, or for the ascertainment of any right or liability concerning the same. Prosecute suits.

Seventh. Direct and superintend the collection of all moneys due to the State, and employ counsel to prosecute suits instituted at his instance, on behalf of the State. Direct collection of money.

Eighth. Draw warrants on the treasurer for all moneys directed by law to be paid out of the Treasury, to public officers, or for any other object whatsoever, as the same may become payable; and every warrant shall be properly numbered. Draw warrants on treasury.

Ninth. Furnish to the Governor, on his requisition, information in writing upon any subject relating to the duties of the office of auditor. Furnish information to Governor.

Tenth. Superintend the fiscal concerns of the State, and their management in the manner required by law; and furnish the proper forms to assessors, treasurers, collectors, and auditors of counties. Superintend fiscal concerns, and furnish forms to county officers.

Eleventh. Keep and preserve all public books, records, papers, documents, vouchers, and all conveyances, leases, mortgages, bonds, and all securities for debts, moneys or property, and accounts and property, of any description, belonging or appertaining to his office, and also to the State, where no other provision is made by law for the safe keeping of the same. Preserve public records, &c.

Twelfth. Suggest plans for the improvement and management of the public revenues, funds and incomes. Suggest plans for management of revenue

Thirteenth. Report and exhibit to the General Assembly at its biennial meeting, a complete statement of the revenues, taxables, funds, resources, incomes and property of the State, Make annual report.

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known to his office, and of the public revenues and expenditures of the two preceding fiscal years, with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing two years, specifying therein each object of expenditure, and distinguishing between each object of expenditure and between such as are provided for by permanent or temporary appropriations, and such as require to be provided for by law; and showing also the sources and means from which all such expenditures are to be defrayed.

Require person receiving money, &c., to render statement.

SEC. 3. He shall, from time to time, require all persons receiving moneys or securities, or having the management of any property, money, securities, or funds of the State, of which an account is kept in his office, to render statements thereof to him; and all such officers or persons shall render such statements at such time and in such form as shall be required.

May administer oaths.

SEC. 4. He shall have power to administer oaths in the adjustment, or settlement of all claims for or against the State.

Shall keep a record of all warrants.

SEC. 5. Whenever any person is entitled to draw money from the State Treasury, the Auditor shall draw a warrant in his favor on the Treasurer of State, and deliver the same to the party entitled thereto, and shall enter in a proper book provided for that purpose, every warrant he draws on the treasury, in the order he issues the same, in such manner as to show the date thereof, in whose favor drawn, the nature of the claim upon which it is founded, with a reference to the law under which it is drawn; and shall carry such entries into a book of general accounts, under separate and distinct heads, and shall number and file in his office, all papers, and vouchers upon which he shall issue any warrant for the payment of money.

Charge penalty against officers, &c., failing to settle.

SEC. 6. Whenever any officer or other person has received moneys belonging to the State, or has been entrusted with the collection, management, or disbursement of any moneys, funds, or interest accruing therefrom, belonging to, or held in trust by the State, and shall fail to render an account thereof to, and make settlement with, the auditor within the time prescribed by law, or where no particular time is prescribed, shall fail to render such account and make settlement, upon being required so to do by the auditor, within ten days after such requisition, the auditor shall state an account against such officer or person, charging ten per cent. damages, and interest at the rate of six per cent. per annum, from the time of failing to render an account and settle as aforesaid.

Bring suit against officers, &c., failing to pay.

SEC. 7. Whenever any officer or other person shall render an account to, and make settlement with the Auditor, as in this act required, and shall fail to pay over to the Treasurer of State the amount to be paid by such officer or person into the State Treasury, or to such person as shall be entitled by

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law to receive the same, within the time prescribed by law, or if no time is prescribed by law, then within the time specified by such auditor; the auditor upon being notified by said treasurer, or otherwise, of such failure, shall institute suit for the recovery of the amount due and unpaid.

Copy of account sufficient evidence.

SEC. 8. A copy of the account, in such case made out and certified by the auditor, shall be sufficient evidence to support an action for the amount stated therein to be due, without proof of the signature or official character of such auditor; subject, however, to the right of the defendant to plead and give in evidence, as in other actions, all such matters as shall be legal and proper for his defence.

Party sued to pay costs, except, &c.

SEC. 9. The party so sued shall be subject to the costs and charges of suit, except in cases in which he shall have rendered a true account, and shall also have paid the amount to the proper person authorized to receive the same, before the commencement of such suit, or unless suit is brought against the representative of the original party.

Party sued to pay costs if he fail to produce his evidence.

SEC. 10. If any defendant in any such suit, upon the trial, give any evidence which existed prior to the time of such adjustment and settlement, and which was not produced to such auditor at the time of said settlement, such defendant shall be subject to the costs and charges of such suit.

Explanation.

SEC. 11. Nothing contained in the provisions of this act shall be so construed as to affect any legal remedy which might be used if such provisions were not in force, for the recovery of any claim in favor of the State.

Shall preserve deeds, documents, &c.

SEC. 12. All deeds, leases, mortgages, bonds, and other securities for debts, moneys, or property, and all maps, profiles, and documents relating to the property, or public works belonging to the State, unless otherwise specially directed, shall be deposited with and kept by the auditor, who shall give the necessary receipt therefor to the person entitled to such receipt, if demanded.

Annually procure list of entries of land.

SEC. 13. The auditor shall annually procure from the different land offices within the State, including canal and Michigan road land offices, a complete register, catalogue, and description of each tract of land of which such register and description has not been already procured; and which has been or may hereafter be sold at such land offices, showing the divisions in which such tracts of land may have been sold, and noting the whole number of acres in each division, subdivision, and tract sold, stating the date of entry, and whether a final certificate or receipt has been given to the purchaser therefor.

Preserve records relative to congressional survey.

SEC. 14. He shall take charge of and keep in his office, the registers, catalogues, descriptions, and maps, heretofore procured by the State, or that may hereafter be procured, from the general land office, relating to the Congressional survey of the State.

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Furnish copy. SEC. 15. He shall furnish copies of all or any part of such registers, descriptions or maps, when so required by any board of county commissioners, or other person, at the expense of the board or person demanding the same.

All books, &c., open to inspection. SEC. 16. All the books, papers, letters, and transactions pertaining to the office of auditor, shall be open to the inspection of a committee of the General Assembly, or either branch thereof, and also to the inspection of the Governor.

Duty as to town of Indianapolis and Mich. road. SEC. 17. Said auditor shall do all acts necessary to be performed in relation to the business heretofore performed by the agent of the town of Indianapolis, and commissioner of the Michigan road, in completing and winding up the business of said offices.

CHAPTER 8.

AN ACT in relation to County Auditors.

[APPROVED MAY 31, 1852.]

Term of office. SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, The county auditor shall hold his office for the term of four years from the first Monday in March next succeeding his election, and until his successor is elected and qualified.*

Shall execute bond, and keep office open at the county seat. SEC. 2. He shall, before entering upon the duties of his office, execute his official bond, to be approved by the board of county commissioners, in the penal sum of two thousand dollars; and shall keep his office at the county seat of his county, and shall keep the same open for the transaction of business, at all times during business hours.

To be clerk of board of commissioners. SEC. 3. The auditor, by virtue of his office, shall be clerk of the board of county commissioners of his county, and shall keep an accurate record of all the corporate proceedings of such board, and shall preserve the documents, books, records, maps and papers deposited in his office, and at the expiration of his term, deliver the same to his successor.

Examine accounts and issue orders. SEC. 4. He shall examine and settle all accounts and demands chargeable against his county, which are not directed to be settled and allowed by some other tribunal or person; and for all such sums of money settled and allowed by himself, such other tribunal or person, or where the same is fixed by law, he shall issue his orders on the treasurer of the county, payable to the person entitled thereto, which orders

*As to a contest of the election of auditor, see 8 Blackf., 310.
The compensation and duties may be increased or diminished at any time by the legislature.—*Gilbert* v. *Board of Commissioners*, 8 Blackf., 81.

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shall be numbered, progressively, and the number, date, and amount of each, and to whom payable, and the purpose for what drawn, shall, at the time of issuing the same, be entered in a book kept for that purpose.

Keep account current with treasurer.

SEC. 5. He shall keep an accurate account current with the treasurer of his county, and when any person shall deposit with him, any receipt given by the treasurer for money paid into the treasury, such auditor shall file such receipt, and charge such treasurer with the amount thereof.

Acknowledge deeds, &c.

SEC. 6. Auditors are authorized to take acknowledgment of deeds and mortgages, executed for the security of trust funds, required to be loaned by them.

Deputies.

SEC. 7. Auditors may appoint deputies, to perform the duties of auditor, and shall be liable for the official acts of such deputies.

Administer oaths.

SEC. 8. Auditors and their deputies are authorized to administer oaths, necessary in the performance of their duties; also the oath of office to any officer who receives his certificate of appointment, or election, from such auditor; and oaths relating to the duty of such officers.

Not to practice as attorneys.

SEC. 9. No person doing the duties of auditor, shall practice as an attorney, before the board of county commissioners of his county.

Orders cancelled.

SEC. 10. Any person may have a county order cancelled by the auditor, and two or more new orders issued in lieu thereof, by paying to such auditor the fees allowed for such services.

Board to appoint in case of non-attendance.

SEC. 11. In case the auditor is unable to attend to the duties of his office during the session of the board of county commissioners, and having no deputy; or having a deputy, and such deputy not being able to attend, some person may be deputized by such board to perform the duties of auditor, for the time being.

To institute suit for funds.

SEC. 12. County Auditors are authorized to institute suit and prosecute the same to final judgment and execution, in the name of the State, against principals or sureties, or either, upon any note, bond, mortgage, or any obligation, on account of any trust fund, or other fund, whether such note, bond, or mortgage, be in the name of the State or any other person.

Persons now acting as auditors to continue, &c.

SEC. 13. Nothing in this act shall be so construed as to prevent the persons now discharging the duties of county auditor, in any county, from continuing to perform the duties of that office during the time he would otherwise have been entitled.

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CHAPTER 9.

AN ACT to authorize County Auditors and Recorders to re-copy maps and plats when the original copies are worn or defaced.

[APPROVED JUNE 15, 1852.]

Maps defaced, new ones to be made, &c.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That whenever any map or plat of lots or lands deposited in the office of any county auditor or recorder, shall have become so worn or defaced, as to be unfit for use or reference, it shall be the duty of such officer having charge of the same, to make or cause to be made, a new copy of such map or plat, which copy shall correspond with the original so far as the same can be deciphered, and if any part thereof be illegible, said officer shall resort to the most authentic sources to supply and fill up the same; and said map or plat shall be used for reference, and in all respects have the same legal bearing and effect as the original map or plat. It shall also be the duty of county auditors to take copies of such maps or plats in the recorder's office as may be necessary for the discharge of their official duties.

County board to allow compensation therefor.

SEC. 2. The county boards shall make such allowances to officers of their respective counties, for such services, as shall be sufficient to compensate for the same.

CHAPTER 10.

AN ACT to authorize and regulate the business of General Banking.

[APPROVED MAY 28, 1852.]

Auditor of State to cause blank notes to be engraved and printed.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That it is hereby made the duty of the Auditor of State, on application of any person or association of persons wishing to organize under this act, to cause to be engraved and printed in the best manner, to guard against counterfeiting, such quantity of circulating notes, in the similitude of bank notes, in blank, of the different denominations hereinafter authorized to be issued, as may from time to time be needed to meet the demands of those organizations for the purposes of banking.

Banker, &c., may furnish plates to auditor.

SEC. 2. Nothing herein contained shall be so construed as to prevent any banker or banking association from procuring their own plates, dies, and other materials for engraving and printing blank notes, and furnishing them to the auditor, and leaving them ever after in his custody and control, to be used and disposed of as though such auditor had himself procured them under the preceding section.

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Notes to be for sums of from one to five hundred dollars. No intermediate notes between five and ten, ten and twenty, &c. Proviso.

SEC. 3. Such bank notes in blank, so procured or placed in the hands of the Auditor as aforesaid, shall be of the denominations usually issued by banks, from one dollar to five hundred dollars; but such notes shall not be of any intermediate number between five and ten dollars, ten and twenty, twenty and fifty, or fifty and one hundred dollars. *Provided, however*, No bank under this act shall be authorized to receive or pay out any note or bill for a less denomination than five dollars, issued by any bank or other corporation out of this State; nor shall such banks be authorized to issue bills for circulation of less denomination than five dollars, to an amount exceeding one-fourth of their whole issue.

Notes to be countersigned by auditor, numbered and registered.

SEC. 4. Such blank circulating notes shall be countersigned by such auditor, and numbered and registered in proper books to be kept for that purpose in his office and under his direction, by such persons as the auditor shall appoint, so that each denomination of such circulating notes shall all be of the same similitude, and all bear the uniform signature of such auditor and register.

Association transferring stock to auditor shall receive an equal amount of notes.

SEC. 5. Whenever any person or association of persons formed for the purpose of banking under this act, shall legally transfer to the auditor any portion of the stocks or bonds hereinafter specified, such person or association of persons shall be entitled to receive from the auditor an equal amount of such circulating notes of different denominations, registered and countersigned as aforesaid, to be issued by them in the usual course of banking business, as money.

Stocks—what to consist of.

SEC. 6. Such stocks shall consist of any portion of the public debt now created or hereafter to be created by the United States, or by this State, and chargeable upon the State Treasury, or such other States of the Union as pay interest semi-annually or at any less period, on their public debt; but such public debt shall in all cases, except as to Indiana stocks, be, or be made to be, equal to a stock producing six per cent. per annum; and the public debt of this State so deposited shall be, or be made to be equal to a stock producing five per cent. per annum; and it shall not be lawful for the auditor to take any stock at a rate above its par value, nor above its market value. *Provided*, That whenever any State, whose stock is pledged, in whole or in part, for the redemption of its circulation, shall fail or neglect to pay interest on such bonds or stocks semi-annually or at any less period, then such association or person shall be required to withdraw the said stocks so failing to pay interest, and to substitute for the same, the stocks of interest paying States, or else surrender an amount of its notes equal to the amount of stocks so withdrawn. Proviso.

And if such association or person shall neglect or refuse, for the space of thirty days, so to do, then and in that case, it shall be the duty of the Auditor of State to wind up the bank of the said person, or association, as provided elsewhere n this act.

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Notes after being made payable on demand, may be circulated and used as money.

SEC. 7. Such person or association of persons are hereby authorized, after having executed and signed such circulating notes in the manner required by law to make them obligatory promissory notes, payable on demand at the place of business within this State, of such person or association, to loan and circulate the same as money, according to the ordinary course of banking business, as regulated by the laws and usages of this State.

Bank failing to redeem note, holder may have it protested; auditor shall give notice to bank to pay note; still failing, auditor to give notice that he will apply stocks to the payment of notes, &c.

SEC. 8. In case the maker or makers of any such circulating notes, countersigned and registered as aforesaid, shall, at any time hereafter, on lawful demand, at the place of business specified in such note, during the usual hours of business, fail or refuse to redeem such note in the lawful money of the United States, the holder of such note making such demand may cause the same to be protested for non-payment by a notary public, in the usual manner; and the auditor on receiving and filing in his office such protest, shall forthwith give written notice to the maker or makers of such note to pay the same; and if he or they shall omit to do so for thirty days after such notice, the auditor shall immediately (unless he shall be satisfied that there is a good and legal defense against the payment of such note or notes) give notice in one of the newspapers published at Indianapolis, that all the circulating notes issued by such person or association will be redeemed out of the stocks held by him in trust for that purpose; and it shall be lawful for the auditor to apply the said trust funds belonging to the maker or makers of such protested notes, to the payment and redemption of such notes, with costs of protest, and to adopt such measures for the payment of all such circulating notes put in circulation by the maker or makers of such protested notes, pursuant to the provisions of this act, as will in his opinion most effectually prevent loss to the holders thereof.

Auditor may give power of attorney to receive dividends, &c., on stock deposited with him.

When power may be revoked.

SEC. 9. The auditor may give any person or association so transferring stock in pursuance of the provisions of this act, powers of attorney to receive interest or dividends thereon, which such person or association may receive and apply to their own use; but such powers may be revoked upon such person or association failing to redeem the circulating notes so issued, or whenever in the opinion of the auditor, the principal of such stock shall become an insufficient security; said auditor also at the instance of the owners of such stock so transferred in trust as aforesaid, may in his discretion change or transfer the same for other stocks of the same kinds specified above in this act; or may retransfer the said stocks, or any part thereof, upon receiving and cancelling an equal amount of such circulating notes delivered by him to such person or association in such manner that the circulating notes shall always be secure in full by such stocks, and shall not be reduced or withdrawn as

Auditor may exchange stocks for others of same kind, or for notes, &c.

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aforesaid below the value of fifty thousand dollars of the stocks of any person or association so transferred as aforesaid.

Notes, how to be stamped.

SEC. 10. The bills or notes so to be countersigned, and the payment of which shall be so secured as aforesaid, shall be stamped on their face, "secured by the pledge of public stocks."

Bank failing as premised in sec. 8, auditor may sell stocks at public auction.

SEC. 11. In case such person or association of persons shall fail or refuse to pay such bills or notes on demand, in the manner specified in the eighth section of this act, the auditor, after the thirty days' notice therein mentioned, may proceed to sell at public auction, the public stocks so pledged, and out of the proceeds of such sale shall pay and cancel the bills or notes, default in paying which shall have been made as aforesaid; but such sale shall be made in the city of New York, unless the banker or banking association give to the auditor written consent, duly authenticated, that such stocks may be sold at Indianapolis.

State not pledged for the payment of notes, further than the securities pledged with auditor. Where banking may be carried on.

SEC. 12. Nothing in this act contained, shall be considered as implying any pledge on the part of the State for the payment of said bills or notes, beyond the proper application of the securities pledged with the auditor for their redemption; nor shall any thing herein contained be construed to empower any person or association to conduct or carry on the business of banking at any other than the place of business of such individual banker or banking association, which place of business shall, in every instance be the same at which their small bank bills respectively are made payable.

Stocks to be held exclusively for the redemption of notes, till they are paid.

SEC. 13. Public stock to be deposited with the auditor by any such person or association, shall be held by him exclusively for the redemption of the bills or notes of such person or association, put in circulation as money until the same are paid; and shall in no case be held for the benefit of any depositor or other person having business with such individual banker or banking association, until after the issue of said bank is redeemed.

Plates, &c., to be kept by auditor.

SEC. 14. The plates, dies and materials to be procured by the auditor, for the printing and making of the circulating notes provided for hereby, shall remain in his custody, and under his direction; and the expenses necessarily incurred in executing the provisions of this act, shall be audited and settled by the auditor, and paid out of any moneys in the treasury not otherwise appropriated; and for the purpose of reimbursing the same, the said auditor is hereby authorized and required to charge against and receive from such person or association applying for such circulating notes, such rate per cent. thereon, as may be sufficient for that purpose, and as may be just and reasonable.

To pay expense of executing this law, he may charge per cent. on notes.

Plates, &c., when and in what manner to be destroyed.

SEC. 15. All plates, dies, and such like materials of, and peculiar to, any individual banker or banking association, which shall have closed business, either by its own voluntary

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act, or by operation of law under the direction of the auditor, shall be by such auditor, in the presence of the Governor and Treasurer of State destroyed; and such destruction, specifying the articles so destroyed, shall be officially certified to by all the three aforesaid officers.

Auditor, &c., not to sign bills to exceed amount of stocks deposited.

Penalty.

SEC. 16. It shall not be lawful for the auditor or other officer, to countersign bills or notes for any person or association of persons to an amount, in the aggregate exceeding the public stocks, at their value, as provided in the sixth section of this act, deposited with the auditor by such person or association; and any auditor or other officer who shall violate the provisions of this section shall, upon conviction, be punished in such manner as the criminal laws of the State may direct.

How offices of discount, &c., may be established.

SEC. 17. Any number of persons may associate to establish offices of discount, deposit, and circulation upon the terms and conditions, and subject to the liabilities prescribed in this act; but the aggregate amount of the capital stock of any such association shall not be less than fifty thousand dollars.

Certificate shall specify:

SEC. 18. Such persons, under their hands and seals, shall make a certificate which shall specify,

The name.

First. The name assumed to distinguish such association, and to be used in its dealings.

Place of business.

Second. The place where the operations of discount and deposit of such association are to be carried on, designating the particular city, town or village.

Amount of capital and number of shares.

Third. The amount of the capital stock of such association, and the number of shares into which the same shall be divided.

Names of share holders, &c.

Fourth. The names and places of residences of the share holders, and the number of shares held by each of them respectively.

Period of existence.

Certificate to be recorded, and copy filed with Secretary of State.

Fifth. The period at which such association shall commence and terminate; which certificate shall be proved or acknowledged and recorded in the office of the clerk of the county where the office of such association shall be established, and a copy thereof filed in the office of the Secretary of State.

Certificate may be used as evidence.

SEC. 19. The certificate required by the last preceding section to be recorded and filed in the offices of the clerk of the county and Secretary of State, as aforesaid, or copies thereof duly certified by either of those officers, may be used as evidence in all courts and places, for and against any such association, and shall be *prima facie* evidence of the facts therein contained.

Banking powers.

SEC. 20. Such association shall have power to carry on the business of banking by discounting bills, notes, and other evidences of debt, by receiving deposits, by buying and selling gold and silver bullion, foreign coins and bills of exchange, in the manner specified in their articles of association for the purposes authorized by this act; by loaning

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money on personal security, and by exercising such incidental powers as shall be necessary to carry on such business; to choose one of their number as president of such association, and to appoint a cashier, and such other officers and agents as their business may require, and to remove such president, cashier, officers and agents, at pleasure, and appoint others in their place. Such association shall be entitled to charge and receive, for moneys loaned, interest at a rate not exceeding six per centum per annum, but the same may, according to bank rules, be discounted and taken in advance out of the sum loaned.

Shares transferable.

SEC. 21. The shares of said association shall be deemed personal property, and shall be transferrable on the books of the association in such manner as may be agreed on in the articles of association; and every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of prior shareholders; and no change shall be made in the articles of association by which the rights, remedies, or security of its existing creditors shall be weakened or impaired. Such association shall not be dissolved by the death or insanity of any of the shareholders therein; nor shall any such transfer operate to release the party so transferring from the operation of section twenty-fifth of this act, making stockholders liable over and above their stock to an amount equal to such stock: *Provided*, that such individual liability of such stockholder so transferring, as aforesaid, shall not extend beyond the period of one year from the time such transfer shall have been reported to, or otherwise filed in the office of the Auditor of State.

Articles of association not to be changed so as to impair rights, &c., of creditors.

Association not to dissolve on account of death, &c., of shareholder.

Transfer shall not release party from individual liability.

Proviso.

May increase their capital stock.

SEC. 22. It shall be lawful for any association of persons organized under this act by their articles of association, to provide for an increase of their capital and of the number of the associates, from time to time as they may think proper; and in case of any shares of stock held in the name of one person, but in whole or in part for the use and benefit or as the property of another, both the person in whose name such stock is held, and the person for whose use it is so held, shall be subject to the operation of the twenty-fifth section of this act, making stockholders liable over and above their stock to an amount equal to such stock.

Person holding shares for another, both individually liable.

All contracts and bills to be signed by the President, &c.

SEC. 23. Contracts made by any such associations, and all notes and bills by them issued and put in circulation as money, shall be signed by the President or Vice President and cashier thereof; and all suits, actions, and proceedings brought or prosecuted by or on behalf of such association, may be brought or prosecuted in the name of the President thereof; and no such suit, action or proceeding shall abate by reason of the death, removal from office, or resignation of such President, but may be continued and prosecuted according to such rules as the courts of law may direct, in the name

Suits may be brought in his name; shall not abate on account of his death, &c

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of his successor in office, who shall exercise the powers, enjoy the rights, and discharge the duties of his predecessor.

Suits may be brought against president; not to abate on account of his death, &c.; judgment, how enforced.

SEC. 24. All persons having demands against any such association, may maintain actions against the President thereof; which suits or actions shall not abate by reason of the death, resignation or removal from office of such President, but may be continued and prosecuted to judgment against his successor; and all judgments and decrees obtained or rendered against such President for any debt or liability of such association, shall be enforced first against the joint property of the association, and which property shall be liable to be taken and sold by execution under any such judgment or decree.

Individual liability.

SEC. 25. Every shareholder of any such association shall be liable in his individual capacity for any contract, debt or engagement of such association, to an amount over and above his stock equal to the amount of his shares of such stock.

Association may hold real estate:

SEC. 26. It shall be lawful for such association to purchase, hold and convey real estate for the following purposes:

For place of business.

First. Such as shall be necessary for its immediate accommodation in the convenient transaction of its business; or,

For security.

Second. Such as shall be mortgaged to it in good faith by way of security for moneys due to such association; or,

Conveyed for debt.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealing; or,

Purchased at sale, &c.

Fourth. Such as it shall purchase at sales under judgments, decrees or mortgages held by such association.

Conveyances, to whom made, and who may convey.

The said association shall not purchase, hold or convey real estate in any other case or for any other purpose; and all conveyances of such real estate shall be made to the president or such other officer as shall be indicated for that purpose in the articles of association; and which president or officer, and his successors, from time to time, may sell, assign and convey the same, free from any claim thereon, against any of the share holders, or any person claiming under them.

Annual statement, what to contain.

SEC. 27. Such association shall, on the first Mondays of January and July, in every year, after having commenced the business of banking, as prescribed by this act, make out and transmit to the auditor, in the form to be provided by him a full statement of the affairs of the association, verified by the oaths of the president or cashier, which statement shall contain:

First. The amount of the capital stock, including that deposited with the auditor, paid in according to the provisions of this act.

Second The value of the real estate of the association, specifying what portion is occupied by the association as necessary to the transaction of business.

Third. The shares of stock held by such association, whether absolutely, or as collateral security, specifying each

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kind and description of stock, and the number and value of the shares of each.

Fourth. The amount of debts due to the association, specifying such as are due from moneyed or other corporations or associations; and also specifying the amount secured by judgment, and the amount which ought to be included in the computation of losses.

Fifth. The amount of debts due by such association, specifying such as are payable on demand, and such as are due to moneyed or other corporations or associations.

Sixth. The amount of claims against the association, not acknowledged by it as debts.

Seventh. The amount of notes, bills, or other evidences of debt issued by such associations.

Eighth. The amount of the losses of the associations specifying whether charged on its capital or profits since its last preceding statement, and of its dividends declared and made during the same period.

Ninth. The average amount in each month during the preceding six months, of the debts due to and from the association, the average amount of specie possessed by the same during each month, and the amount of bills and notes issued by such association and put in circulation as money, and outstanding against the association, on the first day of each of the preceding six months.

Tenth. The average amount in each month during the preceding six months, due to the association, from all the shareholders in the association; also the greatest amount due to the association in each of the said preceding six months, from all the shareholders in such association.

Eleventh. The amount which the capital of the said association had been increased during the preceding six months, if there shall have been any increase of the said capital, and the names of any persons who may have become parties to the said articles of association, or may have withdrawn therefrom since their last reports.

Auditor shall have statement published.

It shall be the duty of the Auditor to cause the statement required to be made by this section, to be published in a newspaper printed in the county where the place of business of such association is situated, and in some paper published at Indianapolis, the expense of which shall be paid by such association: *Provided*, That such private banker or banking association may select such paper and make the contract for such publication.

Proviso.

Association failing to make statement, may be proceeded against and dissolved.

SEC. 28. If such association shall neglect to make out and transmit the statement required in the last preceding section, for one month beyond the period when the same is required to be made, or shall violate any of the provisions of this act, such association may be proceeded against and dissolved by the court, on application of the auditor, or any

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creditor thereof, in the same manner as any moneyed corporation may be proceeded against and dissolved.

If any part of capital is withdrawn, no dividends shall be made; if any are made, circuit court to make order for closing business.

SEC. 29. If any portion of the original capital of any such association shall be withdrawn for any purpose whatever, whilst any debts of the association remain unsatisfied, no dividends or profits on the shares of the capital stock of the association shall thereafter be made, until the deficit of capital shall have been made good, either by subscription of the shareholders or out of the subsequently accruing profits of the association, and if it shall appear that any such dividends have been made, it shall be the duty of the circuit court of the proper county to make the neccssary orders and decrees for closing the affairs of the association, and distributing its property and effects among its creditors and shareholders.

List of names of shareholders to be filed with county clerk and Auditor of State.

SEC. 30. The president and cashier of every association formed pursuant to the provisions of this act, shall at all times keep a true and correct list of the names of all the shareholders of such association, and shall file a copy of such list in the office of the clerk of the county where any office of such association may be located, and also in the office of the Auditor of State, on the first Mondays of January and July in every year.

No notes under $500 to be made payable at any other place than place of business.

SEC. 31. It shall not be lawful for any association formed under the provisions of this act, to make any of its bills or notes of a denomination less than five hundred dollars, to be put in circulation as money, payable at any other place than at the office where the business of the association is carried on and conducted.

Repeal.

SEC. 32. The Legislature may, at any time, alter or repeal this act.

Amount of specie to be kept on hand.

SEC. 33. No association of persons authorized to carry on the business of banking under this act, shall at any time, for the space of twenty days, have on hand at their place of business, less than twelve and a half per cent. in specie, on the amount of the bills or notes in circulation as money.

This act to be in force from 1st July, 1852.

SEC. 34. This act to be in force from and after the first day of July, one thousand eight hundred and fifty-two.

On proof that note is destroyed, holder may recover.

SEC. 35. Whenever it is proven that any note or bill issued by any person or association authorized by this act, has been irrecoverably destroyed or lost, the person who may have been the holder thereof, shall be entitled to recover the amount so lost or destroyed.

Penalty for making false entries, reports, &c.

SEC. 36. Every officer, agent, or clerk of said bank or association, who shall willfully and knowingly subscribe, or make any false statement or false entries in the books of such person or association, or shall knowingly subscribe or exhibit false papers with the intent to deceive any person authorized to examine as to the condition of such bank or association, or shall willfully and knowingly subscribe or make false reports, shall be deemed guilty of felony, and shall be subjected

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to imprisonment at hard labor in the State prison, for such term of years as the jury trying the case may think proper; and likewise any commissioner, examiner, master in chancery or judge, willfully and knowingly subscribing or making any false report, shall be deemed guilty of felony, and be subjected to like penalties.

Director not to borrow more than double the amount of his stock, except on bill of exchange.

SEC. 37. No director shall either directly or indirectly borrow from said bank or association, on loan, discount, or by any other mode, an amount larger than double the amount of stock owned and held by him in said company, except on bona fide bills of exchange drawn payable out of this State.

No officer of bank to act as notary therefor.

SEC. 38. No officer or stockholder, or other person connected with the management of the bank shall act as a notary public therefor.

CHAPTER 11.

AN ACT for the better support and management of the Indiana Institute for the education of the Blind.

[APPROVED JUNE 18, 1852.]

Trustees to report estimate of expenses.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the trustees of the Indiana Institute for the education of the blind shall hereafter present in each of their regular reports to the legislature, made in pursuance of the provisions of the act establishing said Institute, an estimate of the probable amount of money which will be necessary to defray the expenses of the establishment during the ensuing two years, embraced under the following heads namely: for salaries of resident officers, for boarding expenses of officers and pupils, for household furniture, for school apparatus, books etc., for support of work departments, for improvements and repairs, and for miscellaneous purposes.

Legislature shall appropriate.

SEC. 2. The General Assembly shall appropriate the sums found necessary, as above, to be paid out of any moneys in the treasury not otherwise appropriated.

Treasurer of State treasurer of Institute.

SEC. 3. The Treasurer of State shall be ex-officio treasurer of the Institute and shall be responsible on his bond for the faithful discharge of all the duties of said office.

Superintendent to make all purchases, give bond, &c.

SEC. 4. The superintendent of the Institute shall, under the regulations hereinafter specified, make all purchases of supplies, and pay all wages, either directly or through his assistants, which shall be found necessary for the several departments, including furniture, apparatus, work material, clothing, provisions, provender, and all else of a like nature, and shall give bonds in the sum of five thousand dollars, for

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the faithful discharge of this duty, which bond shall be left on file at the office of the Treasurer of State.

Funds to be subject to order of Trustees.

SEC. 5. The funds appropriated for the support of the Institute shall be subject to the order of the trustees and may be drawn from the State Treasury, on the warrant of the Auditor of State, based upon the orders of the board, attested by their secretary, and placed in the hands of the treasurer, who shall pay them out only upon the orders of the board of trustees, said orders being retained by him as vouchers.

System of expenditure.

SEC. 6. The system of expenditure and accountability by the superintendent, shall be as follows, namely.

First. For defraying current expenses the trustees shall place in the superintendent's hands, a sum not exceeding five hundred dollars, taking his receipt for the same.

Second. With the sum so advanced, he shall make all necessary minor purchases, pay domestics' wages, etc. and present a detailed account of the same, accompanied with vouchers where it is practicable to obtain them to the trustees at each of their monthly meetings.

Third. The account so presented shall be examined by the trustees, and, if approved, an order issued upon the treasurer for the amount of the same, thus restoring to the superintendent, the sum originally advanced, to be expended as before.

Fourth. Whenever furniture, apparatus, work, material, or the like, which cannot be classed under the head of petty expenses, shall in his judgment be needed, the superintendent shall make it known to the trustees, who, if they deem it expedient shall authorize the purchase of the same, and he shall in no case make such purchase without authority from the board.

Accounts, how paid, &c.

Fifth. All accounts rendered for articles purchased as above, shall be first examined and certified to by the superintendent, and then submitted to the board of trustees for allowance, who shall issue their orders on the treasurer for the payment of the same in favor of those presenting such accounts.

Sixth. For the payment of salaries, purchase of real estate, and the settlement of building or other accounts not designated in the foregoing sections, the trustees shall, upon presentation of such accounts, issue their orders upon the treasurer as heretofore provided, taking receipts for the same, which, together with receipts for all other orders issued as above, shall be kept on file at the Institute as vouchers in connection with their respective bills of items.

Purchases not to be made from trustees.

SEC. 7. There shall in no case be purchased of any of the trustees, or resident officers, any article for the use of the Institute, or for building or other purposes, excepting where such purchase shall be recommended by the superintendent and approved by a unanimous vote of the board of trustees.

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Orders, what to embrace.

SEC. 8. The orders of the trustees upon the treasurer, shall in all cases embrace the name of the person to whom the payment is to be made, together with a statement of the object of the expenditure.

Trustees to report abstract of expenditures.

SEC. 9. The trustees shall present in each of their biennial reports to the General Assembly, an abstract of their expenditures for the support of the Institute during the two fiscal years preceding, arranged and classified as heretofore in their annual reports.

Statement of treasurer.

SEC. 10. There shall be appended to said reports of the trustees, a statement from the treasurer of the Institute, showing the names of the individuals to whom he has paid out money on the orders of the trustees, and for what purpose such sums have been expended.

Statement of superintendent.

SEC. 11. There shall also be embraced in said report, a statement from the superintendent of the Institute, of the operations of the work department, showing the number and kinds of articles manufactured, the amount of money expended for materials, labor, etc., and the amount received for goods sold.

CHAPTER 12.

AN ACT prescribing the manner of compelling officers to give new bonds, and additional sureties.

[APPROVED MAY 31, 1852.]

Proceeding to obtain new bond.

Be it enacted by the General Assembly of the State of Indiana: SECTION 1. Whenever the sureties in the official bond of any officer shall remove without the State, become insufficient, or the penalty inadequate to secure the faithful performance of the duties of his office by the diminution of such penalty by suit, or by an increase of liabilities from the enactment of laws after the commencement of his term, or other sufficient cause, the clerk of the court of common pleas of the county in which such officer shall reside, on his own knowledge, or whenever any other person competent to vote for such officer, shall file with him an affidavit specifying any such causes, shall issue a writ to the sheriff, commanding him to appear before the judge of the court of common pleas, ten days after the service of such process, at the court house of such county, and answer such complaint; and such summons shall be served, return thereof made, and the fees thereon charged, as in case of a summons from the circuit court.

Time and place of hearing.

SEC. 2. Such clerk, on the return of such process served, shall immediately notify such judge of the time and place of hearing such complaint, and such judge shall attend thereupon.

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Trial of complaint, and determination thereon.

SEC. 3. At the time set therefor, whether the officer complained against appear or not, upon being satisfied of the legal service of such process, such judge shall hear and determine such complaint; and if he decide against the same, he shall dismiss it at the cost of the petitioner, unless such petitioner be such clerk, in which case he shall dismiss it without cost; but if he decide that such bond has become insufficient by the removal of the sureties, or that they are unable to discharge the penalty thereof, or that such penalty is inadequate to secure the official liabilities of such officer, such judge shall require a new bond with sufficient additional sureties to his approval, to be executed and filed by such officer with him, within ten days thereafter, and tax the costs of such proceedings against him.

Failure to file bond, office declared vacant.

SEC. 4. If such officer fail to file such bond, within the time and in the manner prescribed in the preceding section, such judge shall declare his office vacant, and forthwith notify the Governor thereof.

Appeal.

SEC. 5. Either party may appeal from the decision of such judge to the circuit court of the county, on giving bond with penalty in a sum, and surety to be approved by such judge, conditioned for the due prosecution of such appeal, and the payment of all costs which may be adjudged against him therein.

Proceedings upon appeal, and costs thereof.

SEC. 6. Upon the hearing of such appeal, if such court decide against the petitioner, the costs shall be taxed against him; but if the decision be in favor of the complaint the court shall require of such officer, within ten days thereafter, to file a new bond, with sureties to the acceptance of such judge of the court of common pleas, and tax the costs of proceeding against such officer; of which decision the clerk of such court shall notify the keeper of such bond.

Order not obeyed, office declared vacant.

SEC. 7. If the order of the court is not complied with, such judge shall declare such office vacant, and forthwith notify the Governor thereof.

Proceedings to release surety, and procure additional bond.

SEC. 8. Whenever any surety in an official bond shall petition such judge, in writing, to be released therefrom, he shall cause a summons to be personally served on the officer complained of, by the sheriff of the county, commanding him to appear before such judge, ten days after the service thereof, and give additional bond and sureties; which summons shall be served on such officer in person, return thereof made, and fees thereon charged, as in case of a summons from the circuit court.

Clerk to notify judge, &c.

SEC. 9. Such clerk, upon the return of the process provided for in the preceding section, shall notify the judge of the court of common pleas, as is provided for in section two of this act.

If officer give new bond, petitioner to pay costs.

SEC. 10. If, on the day set for the hearing of such complaint, such officer give a new bond and sureties to be approved of such judge, the costs of such proceeding shall be

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taxed against such petitioner; but if such officer fail to give such additional bond and sureties, such judge shall declare his office vacant, forthwith notify the Governor thereof, and tax the costs of proceeding against such officer. If he fail, judge to declare office vacant.

SEC. 11. Whenever a new bond is filed with such judge, as herein provided for, he shall forthwith file the same with the officer who by law has the custody thereof. Bond to be filed.

SEC. 12. If the officer complained of be the clerk of the court of common pleas, the duties herein required to be performed by him, shall be discharged by the auditor of the county. When the auditor to act as clerk.

SEC. 13. Where a new bond shall be required of any officer, the sureties of the old bond shall be liable only for the acts of such officer up to the time of the execution of such new bond; and the sureties of such new bond shall be liable only for the acts of such officer after the date of its execution. Liability of sureties.

SEC. 14. Any officer required to execute a bond as provided herein in consequence of the insufficiency of the sureties, may procure other sureties to sign the old bond, at the time set for the hearing of such petition, and if such judge shall deem such new sureties sufficient, no new bond shall be required; but such old bond, with the names of the new sureties subscribed thereto, shall be directed to be filed with the proper keeper of such bond; and such new sureties shall be liable for all the official acts of such officer from the original date of the execution of such bond; and such bond thus signed by such additional sureties shall be valid against the principal, the original and the new sureties; and all such sureties shall be jointly and severally liable for the official acts of such principal from the date of the original execution of such bond.* Officer may procure new sureties to old bond, &c.

SEC. 15. The board of commissioners of such county shall examine all the official bonds filed in the office of the clerk of the circuit court of such county, and also the bond of such clerk; and if the penalty of any thereof is inadequate, or the sureties thereto are insufficient, or have removed from the State, except in case of the bond of such clerk, such board shall direct such clerk to cause the necessary proceedings to be had as herein provided, to procure a new bond or additional sureties; and in case of such clerk's bond, such board shall cause the auditor of such county to institute such proceedings; and in case such clerk and auditor fail to comply with any such order of such board, they shall be liable on their bonds, for any damage occasioned by such neglect, growing out of any malfeasance or non-feasance in office of the officer complained against. County boards to have supervision of bonds of county officers, and make orders relative thereto; clerk or auditor failing therewith, liable on his bond.

*This section is intended to provide for cases covered by the decision in 7 Blackf., 61, where the adding of the names of new sureties was held to vitiate the bond. A county agent, with *Polke*, *Evans* and *Burnside*, executed an official bond and delivered it to the county commissioners, who afterwards caused the name of *Evans* to be erased, and that of *Vanpelt* to be added, without the knowledge or consent of *Polke* or *Burnside*. A plea stating these facts was held to be good.—*State* vs. *Polke et al.*, 7 Blackf., 27.

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CHAPTER 13.

AN ACT touching official bonds and oaths.

[APPROVED JUNE 9, 1852.]

Oath of office.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That every officer, and every deputy, before entering on his official duties shall take an oath to support the constitution of the United States, and of this State, and that he will faithfully discharge the duties of such office.

Oath to be endorsed on commission.

SEC. 2. Such oath, except in the cases specified in the following section, shall be endorsed on the commission on certificate and signed by him, and certified to by the officer, before whom the same was taken, who shall also deliver to such person a certified copy of the same.

Oath of members of Legislature, Governor and Lieutenant Governor.

SEC. 3. Members of the General Assembly shall take such oath, before taking their seats, which shall be entered on the journals; and the Governor and Lieutenant Governor shall each take such oath, in presence of both Houses of the General Assembly in convention, and the same shall be entered on the journals thereof.

Copy of oath, where to be deposited.

SEC. 4. The certified copy of such oath, shall be deposited by such person as follows:

First. Of all officers, whose oath is endorsed on the commission, and whose duties are not limited to a particular county, in the office of the Secretary of State;

Second. Of county officers, and justices of the peace, and constables, in the clerk's office of the county;

Third. Of officers appointed by the board of county commissioners, and such township officers, (except justices and constables,) as such board may require to do so, with the county auditor.

Official bond, where filed.

SEC. 5. Every officer, except the Secretary of State, and clerks of the circuit courts, of whom an official bond is required by law, shall file such bond in the same office in which he is required to file the certified copy of his official oath; and the Secretary of State, and clerks of the circuit courts, shall, in a book to be kept for that purpose, record all such bonds, for which they shall receive a fee of twenty-five cents from such officer; and such record, or a copy thereof, shall have the same effect in evidence as the original.

Official bonds of clerks of circuit court and Sec'y of State, where filed.

SEC. 6. The official bond of the Secretary of State, shall be filed and recorded in the recorder's office of Marion county; and the official bonds of clerks of the circuit courts shall be filed and recorded in the recorder's office of their respective counties.

Bonds, &c. to be kept, and copies given, &c.

SEC. 7. It shall be the duty of every officer with whom such certified copies and bonds shall be filed to preserve the same, and on demand give certified copies thereof, or of the

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record, attested with his official seal, and for the same he shall receive the same fees allowed by law for certified copies in other cases.

Approval.

SEC. 8. The approval of every official bond, shall be written thereon by the approver thereof; and no bond shall be filed until lawfully approved.

Failing to give bond, office vacant.

SEC. 9. If any officer of whom an official bond is required, shall fail, within ten days after the commencement of his term of office and receipt of his commission or certificate to give bond in manner prescribed by law the office shall be vacant.

Bonds, to whom payable.

SEC. 10. All official bonds shall be payable to the State of Indiana, and every such bond shall be obligatory to such State upon the principal and sureties for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof.

Several recoveries thereon.

SEC. 11. No official bond shall be void on a first recovery, but suits may be instituted thereon, from time to time, until the penalty thereof is exhausted.

Bond not void for certain defect.

SEC. 12. No official bond shall be void because of defects in form or substance or in the approval and filing thereof; but upon the suggestion of such defects such bond shall be obligatory as if properly executed, filed and approved.*

Who to execute bonds.

SEC. 13. All official bonds required by law, shall be executed by the principal and one or more freehold sureties.

Certified copies to be evidence.

SEC. 14. A copy of any official bond legally certified, shall be received as evidence, and suit maintained thereon as on the original.

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*A bond running as follows: "Know all men, &c., that we, *Lionel J. Larkin*, &c.," signed "for *L. J. Larkin, George Crum*, [L. S.] so far as it relates to its force is good, and *Larkin* must be considered a party; but the execution would have been more formal, had it been thus: *Lionel J. Larkin* [L. S.] by *George Crum*, his attorney.—*Wilburn* vs. *Larkin et al.*, 3 Blackf., 55.

The death of a justice of the peace does not discharge the sureties to his official bond.—*State* vs. *Houston et al.*, 4 Blackf., 291.

If the justice were in such case the sole obligor, or surviving obligor, the action would survive against his executors or administrators.—*Ibid.*

An alteration in a deed or bond, made after its execution, in a material part, without the consent of the parties, vitiates the instrument. But it is valid if made with consent of parties. That consent is a question for the jury.—*Rich. M. Co.* vs. *Davis*, 7 Blackf., 412.

A constable's bond, though not executed until after he had commenced the discharge of his duties, may be sued on for any breach committed subsequently to its execution.—*Dickens et al* vs. *the State*, 7 Blackf., 358.

A bond conditioned for the faithful discharge of the duties of fund commissioner of Perry county, was held void because taken without authority. It was also held that the commissioner himself was liable, independent of his bond.—*Marshal et al.* vs. *State*, 8 Blackf., 162.

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CHAPTER 14.

AN ACT dividing the State into Counties, defining their boundaries, and defining the jurisdiction of such as border on the Ohio and Wabash rivers.

[APPROVED JUNE 7, 1852.]

What counties to compose the State.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, The State of Indiana is divided into the following counties, to-wit: Allen, Adams, Bartholomew, Benton, Boone, Brown, Blackford, Clark, Clay, Crawford, Carroll, Cass, Clinton, Dearborn, Decatur, Daviess, Dubois, Delaware, DeKalb, Elkhart, Fayette, Floyd, Franklin, Fountain, Fulton, Gibson, Greene, Grant, Hamilton, Harrison, Hendricks, Henry, Hancock, Huntington, Howard, Jackson, Jefferson, Jasper, Jennings, Johnson, Jay, Knox, Kosciusko, Lake, Lawrence, Lagrange, Laporte, Madison, Marion, Martin, Monroe, Montgomery, Morgan, Miami, Marshall, Noble, Ohio, Orange, Owen, Parke, Pike, Perry, Posey, Putnam, Porter, Pulaski, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Starke, Steuben, Switzerland, St. Joseph, Sullivan, Tippecanoe, Tipton, Union, Vanderburgh, Vermillion, Vigo, Wayne, Warrick, Washington, Warren, White, Whitley, Wells, and Wabash, and shall be bounded as described in the following sections:

ALLEN.

Allen.

SEC. 2. The district of country within the following boundaries shall form and constitute the county of Allen, to-wit: Beginning on the eastern line of the State of Indiana where the line dividing townships twenty-eight and twenty-nine north, intersects the same, thence north with the State line to the line dividing townships thirty-two and thirty-three north, thence west to the line dividing ranges ten and eleven east, thence south with the range line to the line dividing townships twenty-eight and twenty-nine north, thence east to the place of beginning.

ADAMS.

Adams.

SEC. 3. The district of country within the following boundaries shall form and constitute the county of Adams, to-wit: Beginning at the State line where the line dividing townships twenty-eight and twenty-nine intersects the same, thence west to the north east corner of section five, in township twenty-eight north, range thirteen east, thence south to the line dividing townships twenty-four and twenty-five, thence east with the north line of Jay county to the eastern boundary of the State, thence north with the State line, to the place of beginning.

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BARTHOLOMEW.

SEC. 4. The district of country within the following boundaries shall form and constitute the county of Bartholomew to-wit: Beginninig at the north east corner of section one, township ten north, range seven east, thence south to the south-east corner of section thirteeen, in township eight north, range seven east, thence west to the southwest corner of section eighteen, township eight north, range seven east, thence south with the range line to where the same crosses Big Sand creek, thence down the same, with the meanders of said creek, to its junction with the drift-wood fork of White river, thence south with the meanders of said river to the south east corner of section sixteen, in township seven north, of range six east, thence west to the south west corner of section fifteen, in township seven north, range four east, thence north to the north-west corner of section three, in township ten north, of range four east, thence east to the place of beginning. Bartholomew.

BENTON.

SEC. 5. The district of country within the following boundaries shall form and constitute the county of Benton, to-wit: Beginning at the north-east corner of section four, in township twenty-six, range six west, thence south to the line dividing townships twenty-three and twenty-four north, thence west to the State line, thence north to the line dividing townships twenty-six and twenty-seven, thence east to the place of beginning. Benton.

BOONE.

SEC. 6. The district of country within the following boundaries shall form and constitute the county of Boone, to-wit: Beginning at the south-east corner of section twelve, township seventeen, range two east, thence north to the north-west corner of the south-east quarter of section thirteen, in township twenty, north of range two east, thence west to the north-west corner of the south-west quarter of section eighteen, in township twenty, north of range two west, thence south to the south-west corner of section seven, in township seventeen, north of range two west, thence east to the place of beginning. Boone.

BROWN.

SEC. 7. The district of country within the following boundaries shall form and constitute the county of Brown, to-wit: Beginning at the north-west corner of section one, in township ten north, of range one east, thence south to the south-west corner of section twelve, in township seven north, of range one east, thence east to the southeast corner Brown.

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of section nine, in township seven north, of range four east, thence north to the north-east corner of section four, in township ten, north of range four east, thence west to the place of beginning.

BLACKFORD.

Blackford. SEC. 8. The district of country within the following boundaries shall form and constitute the county of Blackford, to wit: Beginning at the north-west corner of section five, in township twenty-four north, range number twelve east, thence west to the line dividing ranges nine and ten, thence south to the south-west corner of section six, township twenty-two, range ten east, thence east to the south-east corner of section five, township twenty-two, range twelve east, thence north to the line dividing townships twenty-three and twenty-four, thence east to the south-west corner of section thirty-two, township twenty-four, range twelve east, thence north to the place of beginning.

CLARK.

Clark. SEC. 9. The district of country within the following boundaries shall form and constitute the county of Clark, to wit: Bounded on the south-east by the Ohio river; on the south and west by the county of Floyd; on the north-west and north by the counties of Washington and Scott; and on the north-east by the county of Jefferson.

CLAY.

Clay. SEC. 10. The district of country within the following boundaries shall form and constitute the county of Clay, to-wit: Beginning at the south-west corner of township nine north, of range seven west, thence east to the south-east corner of section thirty-four in township nine north, of range six west, thence north to the line dividing townships ten and eleven, thence east to the south-west corner of section thirty-five, in township eleven north, of range five west, thence north to the south-east corner of section fifteen, in township twelve north, of range five west, thence west to the line dividing ranges five and six west, thence north to the line dividing townships thirteen and fourteen north, thence west to the northwest corner of section four in township thirteen north, of range seven west, thence south to the line dividing townships twelve and thirteen, thence west to the line dividing ranges seven and eight, thence south to the place of beginning.

CRAWFORD.

Crawford. SEC. 11. The district of county within the following boundaries shall form and constitute the county of Crawford,

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to-wit: Beginning on the Ohio river, at the mouth of Big Blue river, thence up the same, with the meanders thereof, to the line dividing section twenty-six and twenty-seven, in township three, south of range two east, thence north with said line until it strikes Big Blue river, thence up said river with the meanders thereof, to the line dividing sections fourteen and twenty-three, township one south, of range two east, thence west to the south-west corner of section sixteen, thence south to the south-west corner of section twenty-eight, in township one south, of range two east, thence west to the line dividing ranges two and three west, thence south with said line to the south-west corner of section seven, in township three south, of range two west, thence east to the line dividing ranges one and two west, thence south to the south-west corner of section thirty-one, in township three south, of range one west, thence east to the meridian line, thence south to the Ohio river, thence up the same to the place of beginning.

CARROLL.

Carroll. SEC. 12. The district of country within the following boundaries shall form and constitute the county of Carroll, to-wit: Beginning at the south-east corner of section fourteen, township twenty-three north, range one east, thence north to the north-east corner of section twenty-three, township twenty-six north, range one east, thence west to the south-west corner of section fifteen, township twenty-six north, range one west, thence north to the line dividing townships twenty-six and twenty-seven north, thence west to the Tippecanoe river, thence down said river to where the line dividing sections twenty-eight and twenty-nine, township twenty-five north, range three west intersects the same, thence south to the line dividing townships twenty-four and twenty-five, thence east to the north-east corner of township twenty-four north, range three west, thence south to the south-west corner of section eighteen, towhship twenty-three north, range two west, thence east to the place of beginning. *And provided*, That so much of section thirty-three in township twenty-six north, range three west, and sections four, nine, sixteen and twenty-one, in township twenty-five north, range three west, as lies west of Tippecanoe river, be and the same is hereby made a part of said county.

CASS.

Cass. SEC. 13. The district of country within the following boundaries shall form and constitute the county of Cass, to-wit: Beginning on the west side of the great Miami reservation line, where the township line dividing townships twenty-four and twenty-five intersects the same, thence north nine miles to the north-east corner of section twenty-

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three, in township twenty-six north, of range one east, thence west eight miles to the corner of sections fifteen, sixteen, twenty-one and twenty-two, in township twenty-six north, of range one west, thence north three miles to the south-east corner of section thirty-three, township twenty-seven north, of range one west, thence west three miles to the south-west corner of said township twenty-seven north, range one west, thence north twelve miles to the north-west corner of township twenty-eight north, of range one west, thence on the township line dividing townships twenty-eight and twenty-nine east, twenty-two miles to the north-east corner of section three, township twenty-eight north, of range three east, that being the western line of Miami county, thence south on the Miami county line twenty-four miles to a point in the great Miami reserve which, when it is surveyed, will be the south-west corner of section thirty-four, township twenty-five north, of range three east, thence west eleven miles to the place of beginning.

CLINTON.

Clinton. SEC. 14. The district of country within the following boundaries shall form and constitute the county of Clinton, to-wit: Beginning at the north-west corner of section nineteen, township twenty-three north, range two west, thence south to the south-west corner of the north-west quarter of section eighteen, township twenty north, range two west, thence east to the south-east corner of the north-east quarter of section thirteen, township twenty, range two east, thence north to the north-east corner of section twenty-four, township twenty-three, of range two east, thence west to the place of beginniug.

DEARBORN.

Dearborn. SEC. 15. The district of country within the following boundaries shall form and constitute the county of Dearborn, to-wit: Beginning on the Ohio river in the centre of the mouth of Laughery creek, and running up said creek, in the centre of the main channel of the same, following the meanders thereof to where the same crosses the old Indian boundary line, thence northwardly with said line, to a point where the line dividing townships seven and eight north, intersects the same, thence east to the State line, thence south to the Ohio river, thence down the same with the meanders thereof to the place of beginning; provided that this section shall be so construed as to include in said boundary township eight, in range three, and township seven, in range two, and township seven in range one west, and forming a part of said county.

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DECATUR.

Decatur. SEC. 16. The district of country within the following boundaries shall form and constitute the county of Decatur, to-wit: Beginning at the south-west corner of section eighteen, in township number eight north, of range eight east, thence north to the north-west corner of section six, in township ten north, of range eight, thence east to the south-east corner of section thirty-three, in township eleven, range eight east, thence north to the north-west corner of section thirty-four, in township twelve north, of range eight east, thence east to the north-east corner of section thirty-three, township twelve, range eleven east, thence south to the north line of the Grouseland purchase, thence south-eastwardly with the said line, to the line between sections eighteen and nineteen, township eight north, range nine east, thence west to the place of beginning.

DAVIESS.

Daviess. SEC. 17. The district of country within the following boundaries shall form and constitute the county of Daviess, to-wit: Beginning at the forks of White river, thence up the east fork of said river to the line dividing sections twenty-three and twenty-four, in township one north, of range five west, thence north to the line dividing townships four and five north, thence east to the line dividing ranges four and five west, thence north to the line dividing townships five and six north, thence west to the west fork of White river, and thence down the same, with the meanders of the same, to the place of beginning.

DUBOIS.

Dubois. SEC. 18. The district of country within the following boundaries shall form and constitute the county of Dubois, to wit: Beginning at a point on the east fork of White river, where the line dividing sections fifteen and sixteen in township one north, of range six west, crosses the same, thence south to the line dividing townships three and four south, thence east to the line dividing ranges three and four west, thence north to the south-west corner of section eighteen, in townsnip three south, of range three west, thence east to the line dividing ranges two and three west, thence north to the north-east corner of section thirteen, township one north, range three west, thence west to the east fork of White river, thence down said river to the place of beginning.

DELAWARE.

Delaware. SEC. 19. The district of country within the following boundaries shall form and constitute the county of Delaware, to-wit: Beginning at the north-east corner of section twenty-five, township nineteen, range eleven east, thence north

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to the north-east corner of section twelve, township twenty-two north, range number eleven, thence west to the north-east corner of section eleven, township twenty-two north, of range eight east, thence south to the south-west corner of section twenty-four, township nineteen, range eight east, thence east to the place of beginning.

DE KALB.

DeKalb. SEC. 20. The district of country within the following boundaries shall form and constitute the county of DeKalb, to-wit: Beginning at the south-west corner of township thirty-three north, of range twelve east, thence east to the east line of the State, thence north with the State line to the line dividing townships thirty-five and thirty-six, thence west to the line dividing ranges eleven and twelve, thence south to the place of beginning.

ELKHART.

Elkhart. SEC. 21. The district of country within the following boundaries shall form and constitute the county of Elkhart, to-wit: Beginning on the north line of the State where the centre line of range four east strikes the same, thence east to the line dividing ranges seven and eight east, thence south to the line dividing townships thirty-four and thirty-five north, thence west to the central section line of range four east, thence north to the place of beginning.

FAYETTE.

Fayette. SEC. 22. The district of country within the following bounds shall form and constitute the county of Fayette, to-wit: Beginning at the south-east corner of section thirty-three, in township thirteen, range eleven, thence east with the line of Franklin county to the south-east corner of section thirty-five, township thirteen, range thirteen east, thence north with the Union county line to the north-west corner of section thirty-six, in township fifteen, range thirteen, thence west to the south-west corner of section twenty-seven, in township fifteen, range twelve east, thence north to the line dividing townships fifteen and sixteen, thence west to the north-west corner of section three, township fifteen, range eleven, thence south to the beginning.

FLOYD.

Floyd SEC. 23. The district of country within the following boundaries shall form and constitute the county of Floyd, to-wit: Beginning on the Ohio river where the range line dividing fractional section seven in township four south, range six east, and section twelve, in township four south, range five east, strikes the same, thence north with said range line to the south-east corner of section one in township four south,

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range five east, thence to the south-west corner of section three, in township four south, range five east, thence north with the line dividing sections three and four, to the north-east corner of section sixteen, in township three south, of range five east thence west to the south-west corner of section nine, thence north to the south-east corner of section five, thence west, to the south-west corner of section five, thence north to the north-west corner of section thirty-two, in township two south, of range five east, thence west to the south-west corner of section thirty, thence north to the south-west corner of section eighteen, thence west to the south-west corner of section thirteen, in township two south, of range four east, thence north to the south-west corner of section thirteen, in township one south, of range four east, thence east to the north-east corner of section nineteen, township one south, of range five east, thence south to the south-east corner of said section, thence east to the west boundary of the Illinois grant, thence south-eastwardly with the line dividing lots one hundred and twenty-six and one hundred and twenty-seven, in said grant, to Silver Creek, thence down said creek with the meanders thereof, to the mouth thereof, thence down the Ohio river to the place of beginning.

FRANKLIN.

Franklin. SEC. 24. The district of country within the following boundaries shall form and constitute the county of Franklin, to-wit: Beginning at the north-east corner of township seven on the line of the state of Ohio, thence west to the northern boundary of the Grouseland purchase, thence south-westwardly with said boundary to the middle of range eleven, thence north to the line dividing townships twelve and thirteen, thence east with said line to the south-east corner of section thirty-three in township thirteen, range thirteen, thence east to the State line, thence south with the same to the place of beginning.

FOUNTAIN.

Fountain. SEC. 25. The district of country within the following boundaries shall form and constitute the county of Fountain, to-wit: Beginning where the line dividing townships seventeen and eighteen crosses the Wabash river, thence east to the line running through the centre of range six west, thence north to where the said line strikes the Wabash river, thence down the same, with the meanders thereof, to the place of beginning.

FULTON.

Fulton. SEC. 26. The district of country within the following boundaries shall form and constitute the county of Fulton, to-wit: Beginning at the north-east corner of section four in township thirty-one north, range four east, thence south to

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the north-east corner of section four, in township thirty north, range four east, thence east to the line dividing ranges four and five, thence south to the north-west corner of section nineteen, township thirty north, of range five east, thence east to the north-east corner of section twenty-two, same township and range, thence south to the south-east corner of section twenty-four, same township and range, thence west to the north-west corner of section two, in township twenty-nine north, range three east, thence south to the line dividing townships twenty-eight and twenty-nine, thence west to the principal meridian line, thence north to the line dividing townships thirty-one and thirty-two, thence east to the place of beginning.

GIBSON.

Gibson. SEC. 27. The district of country within the following boundaries shall form and constitute the county of Gibson, to-wit: Beginning on White river where the line dividing ranges nine and ten crosses the same, thence down the said river to its junction with the Wabash river, thence down the same to where the line dividing sections twenty-eight and thirty-three, township three south, range fourteen west, strikes the same, thence east to the line dividing ranges twelve and thirteen west, thence south to the line dividing townships three and four south, range twelve west, thence east to the line dividing ranges eleven and twelve west, thence south to the south-west corner of section eighteen, in township four south, range eleven west, thence to the line dividing ranges nine and ten west, thence north to the line dividing townships three and four, thence east to the north-west corner of section four in township four south, range eight west, thence north to the Patoka river, thence down the same, with the meanders thereof, thence to the line dividing sections three and four, township two south, of range nine west, thence north to the north-east corner of section sixteen, township one, range nine west, thence west to the south-west corner of section eight, in said township, thence north to the line dividing townships one north, and one south, thence west to the line dividing ranges nine and ten, thence north to the place of beginning.

GREENE.

Greene. SEC. 28. The district of country within the following boundaries shall form and constitute the county of Greene, to-wit: Beginning at the north-east corner of township eight north, of range three west, thence south to the south-east corner of township six north, of range three west, thence west to the south-west corner of township six north, of range seven west, thence north to the north-west corner of township eight north, of range seven west, thence east to the place of beginning.

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GRANT.

Grant. SEC. 29. The district of country within the following boundaries shall form and constitute the county of Grant, to-wit: Beginning at the south-west corner of section four, township twenty-two north, range six east, thence north to the line dividing townships twenty-five and twenty-six, thence east to the line dividing ranges nine and ten, thence south to the south-east corner of section one, township twenty-two north, range nine east, thence west to the place of beginning.

HAMILTON.

Hamilton. SEC. 30. The district of country within the following boundaries, shall form and constitute the county of Hamilton, to-wit: Beginning at the south-west corner of section seven, township seventeen, range three east, thence north on the range line to the township line dividing townships twenty and twenty-one, thence east to the north-east corner of section five, township twenty, range six east, thence south to the south-east corner of section eight, township seventeen, range six east, thence west to the place of beginning.

HARRISON.

Harrison. SEC. 31. The district of country within the following boundaries shall form and constitute the county of Harrison, to-wit: Beginning on the Ohio river, at the mouth of Big Blue river, thence up the same to the line dividing sections twenty-six and twenty-seven in township three south, range two east, thence north until it strikes Big Blue river, thence up the same with the meanders thereof, to the line dividing sections fourteen and twenty-three, in township one south, range two east, thence east to the north-east corner of section twenty-three, township one south, of range four east, thence south to the south-east corner of section thirteen, township two south, of range four east, thence east to the line dividing ranges four and five east, thence south to the south-east corner of section thirty, township two south, of range five east, thence east to the south-east corner of said section, thence south to the south-west corner of section five, township three south, of range five east, thence east to the north-east corner of section eight, thence south to the south-east corner of said section, thence east to the north-east corner of section sixteen, thence south to the south-east corner of section four, township four south, of range five east, thence east to the range line dividing fractional section seven, in township four south, range six east, and section twelve, in township four south, range five east, thence south with the range line to the Ohio river, thence down the same to the place of beginning.

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HENDRICKS.

Hendricks. SEC. 32. The district of country within the following boundaries shall form and constitute the county of Hendricks, to-wit: Beginning at the south-east corner of section twenty, in township fourteen north, of range two east, thence west to the line dividing ranges two and three west, thence north to the north-west corner of section eighteen, in township seventeen, in range two west, thence east to the north-east corner of the north-west quarter of section seventeen, township seventeen, range two east, thence south to the line dividing townships sixteen and seventeen, thence south between sections four and five, to the place of beginning.

HENRY.

Henry. SEC. 33. The district of country within the following boundaries shall form and constitute the county of Henry, to-wit: Beginning at the south-west corner of section thirty-two, township sixteen north, of range twelve east, thence north to the township line dividing townships sixteen and seventeen, thence east to the south-east corner of section thirty-two, township seventeen north, range twelve east, thence north to the north-east corner of section twenty, township eighteen north, range twelve, thence west to the range line dividing ranges eleven and twelve, thence north on said range line to the north-east corner of section twenty-five, township nineteen north, range eleven, thence west to the north-east corner of section twenty-six, in township nineteen north, range eight east, thence south with the section line to the south-west corner of section thirty-six, in township sixteen north, range eight, thence east to the place of beginning.

HOWARD.

Howard. SEC. 34. That all that country included within the following boundaries shall form and constitute the county of Howard, to-wit: Beginning at the north-east corner of section thirty-six, in township twenty-three north, range two east, thence north to the south-east corner of section thirteen, in township twenty-three north, range two east, thence west to the south west corner of section thirteen, township twenty-three north, of range one east, thence north to the north-west corner of section one, township twenty-four north, of range one east, thence east to the north east corner of section five, in township twenty-four north, of range six east, thence south to the south-east corner of section twenty-nine, in township twenty-three north, of range six east, thence west to the place of beginning.

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HANCOCK.

Hancock. SEC. 35. The district of country within the following boundaries shall form and constitute the county of Hancock, to-wit: Beginning at the south-west corner of section thirty-five, in township fifteen north, range five east, thence east to the south-east corner of section thirty-three, township fifteen north, range eight east, thence north to the north-east corner of section four, in said range and township, thence east to the south-west corner of section thirty-six, township sixteen, range eight, thence north to the north-west corner of section one, in township sixteen north, range eight east, thence east to the south-west corner of section thirty-six, township seventeen north, range eight east, thence north to the north-west corner of section twelve in said township, thence west to the north-west corner of section nine, in township seventeen, range six east, thence south to the south-west corner of said section, thence west to the north-west corner of section fourteen, township seventeen, range five, thence south to the place of beginning.

HUNTINGTON.

Huntington. SEC. 36. The district of country within the following boundaries shall form and constitute the county of Huntington, to-wit: Beginning at the south-east corner of township twenty-six north, of range ten east, thence north to the line dividing townships twenty-nine and thirty north, thence west to the north-west corner of section four, in township twenty-nine north, of range eight east, thence south to the line dividing townships twenty five and twenty-six north, thence east to the place of beginning.

JACKSON.

Jackson. SEC. 37. The district of country within the following boundaries shall form and constitute the county of Jackson, to-wit: Beginning at big Sand creek where the line dividing ranges six and seven east crosses the same, thence down said creek, with the meanders thereof, to its junction with the Driftwood fork of White river, thence down the same to where an east and west line, running through the centre of township seven north, strikes the north-west side of the aforesaid river, thence west to where it crosses the line dividing sections fifteen and sixteen, in range four, thence north with said line to the north-east corner of section sixteen, township seven, range four, thence west to the north-west corner of section sixteen, township seven, range two east, thence south to the north-west corner of section sixteen, in township five north, range two east, thence east to the north-east corner of section fifteen, in the same range and township, thence south to the Driftwood fork of White river, thence up said river, with the meanders

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thereof, to the mouth of the Muscatituck river, thence up the said last mentioned river to the forks thereof, thence up the south fork to where the line dividing ranges six and seven crosses the same, thence north with said range line to the place of beginning.

JEFFERSON.

Jefferson. SEC. 38. The territory included within the following boundaries shall form and constitute the county of Jefferson, to-wit: Beginning on the Ohio river at a point where an east and west line dividing fractional section number twenty-nine, township two south, range ten east, strikes the same, thence west through the centre of said fractional section twenty-nine, and sections thirty and twenty-five to the east line of section twenty-six, township two, range nine, thence north to the south-east corner of section twenty-three, thence west to the south-east corner of section twenty-two, thence north to the north-east corner of section twenty-two, thence west to the south-east corner of section thirteen, township two north, of range eight east, thence north to the south-east corner of township three, range eight, thence north to the line dividing sections twenty-four and twenty-five, thence west to the north-east corner of section twenty-seven, thence north to the north-east corner of section fifteen, thence west to the north-east corner of section seventeen, thence north to the north-east corner of section eight, thence west to the north-east corner of section seven, thence north to the township line, thence west to the north-west corner of said township, thence north with the line dividing ranges seven and eight to the line dividing townships four and five, thence east to the north-east corner of section three, township four, range eight east; reserving, however, all that part of the town of Paris, being the north-east quarter of section four, in township four north, range eight east, which is attached to the county of Jennings, thence north to the north-west corner of section twenty-six, in township five, range eight, thence east to the range line dividing ranges eight and nine, thence north to the north-east corner of section thirteen, township five north, range eight east, thence east to the south-east corner of section eight, township five, range nine, thence north to the line dividing townships five and six, thence east to the north-east corner of section five, township five north, range twelve east, thence south to the Ohio river, thence with said river to the place of beginning: *Provided*, however, that the south half of section five, township three north, range eight east, included within the above boundary is detached from the county of Jefferson, and attached to the county of Scott.

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JASPER.

Jasper. SEC. 39. The district of country within the following boundaries shall form and constitute the county of Jasper, to-wit: Beginning on the State line where the line dividing townships twenty-six and twenty-seven intersects the same, thence east to the south-west corner of section thirty-four, township twenty-seven north, range six west, thence north to the north-west corner of section thirty-four, township twenty-eight, range six west, thence east to the north-west corner of section thirty-four, township twenty-eight, range five west, thence north to the line dividing townships twenty-eight and twenty-nine, thence east to the line dividing ranges four and five west, thence north to the Kankakee river, thence down the same, with the meanders thereof, to the State line, thence south to the place of beginning.

JENNINGS.

Jennings. SEC. 40. The district of country within the following boundaries shall form and constitute the county of Jennings, to-wit: Beginning at the north-west corner of section nineteen, township eight north, range seven east, thence south with said range line, dividing ranges six and seven, to the south fork of the Muscatituck river, thence easterly with the Muscatituck river to the line dividing ranges seven and eight east, thence north to the line dividing townships four and five, thence east to the north-east corner of the north-west quarter of section four, township four north, range eight east, thence south one half mile, thence east one half mile, thence north one half mile, thence east to the south-east corner of section thirty-four, township five north, of range eight east, thence north to the north-west corner of section twenty-six, in said township, thence east to the line dividing ranges eight and nine, thence north to the north-west corner of section eighteen, township five north, of range nine east, thence east to the south-east corner of section eight in said township, thence north to the line dividing townships five and six, thence east to the south-east corner of section thirty-one, township six north, of range ten east, thence north to the north boundary of the Grouseland purchase, thence south-westerly with said boundary to the line dividing sections eighteen and nineteen, township eight north, range nine east, thence west to the place of beginning.

JOHNSON.

Johnson. SEC. 41. The district of country within the following boundaries shall form and constitute the county of Johnson, to-wit: Beginning at the south-east corner of section thirty-four, township eleven north, range five east, thence north to the north-east corner of section twenty-seven, township

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fourteen, range five, thence west to the north-west corner of section thirty, township fourteen, range three, thence south to the southwest corner of section thirty-one, township eleven north, range three east, thence east to the place of beginning.

JAY.

Jay

SEC. 42. The district of country within the following boundaries shall form and constitute the county of Jay, to-wit: Beginning at the State line between the States of Ohio and Indiana, at the township line dividing townships twenty-four and twenty-five north, thence west to the north-west corner of section five, in township twenty-four north, range twelve east, thence south to the south-west corner of section thirty-two, in township twenty-four north, range twelve east, thence west to the north-west corner of section four, in township twenty-three north, range twelve east, thence south to the north-west corner of section eight, in township twenty-two north, of range twelve east, thence west to the line dividing ranges eleven and twelve east, thence south to the line dividing townships twenty-one and twenty-two north, thence east to the State line, thence north with the State line to the place of beginning.

KNOX.

Knox.

SEC. 43. The district of country within the following boundaries shall form and constitute the county of Knox, to-wit: Beginning at the west branch of White river, where the line dividing townships five and six north crosses the same, thence west with said township line to the line dividing ranges nine and ten west, thence due west to the Wabash river, with the meanders thereof, to the mouth of White river, thence up the same with the meanders thereof, to the place of beginning.

KOSCIUSKO.

Kosciusko.

SEC. 44. The district of country within the following boundaries shall form and constitute the county of Kosciusko, to-wit: Beginning at the north-west corner of section three, in township thirty-four north, of range four east, thence east with the line dividing townships thirty-four and thirty-five to the line dividing ranges seven and eight east, thence south with the range line to the south-east corner of section thirteen, in township thirty north, of range seven east, thence west to the south-west corner of section eighteen in township thirty north, of range five east, thence north with the township line to the north-east corner of township thirty-one range four east, thence west to the north-west corner of section three, township thirty north, range four east, thence north through the middle of range four, to the place of beginning.

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LAKE.

Lake. SEC. 45. The district of country within the following boundaries shall form and constitute the county of Lake, to-wit: Beginning on Lake Michigan where the centre line of range seven west intersects the same, thence south to the Kankakee river, thence down the same to the State line, thence north with the same to Lake Michigan, thence eastwardly with the lake to the place of beginning. *Provided*, The northern boundary of said county shall be the same as the northern State line.

LAWRENCE.

Lawrence. SEC. 46. The district of country within the following boundaries shall form and constitute the county of Lawrence, to-wit: Beginning at the line dividing ranges two and three west, at the south-west corner of section eighteen, in township three north, of range two west, thence east to the south-east corner of section seventeen, township three north, range two east, thence north to the east fork of White river, thence up the same to where the line dividing sections twenty-two and twenty-three in township four north, of range two east crosses the same, thence north to the north-east corner of section fifteen, in township five north, of range two east, thence west to the north-west corner of section sixteen, in said township and range, thence north to the line dividing townships six and seven, thence west to the line dividing ranges two and three west, thence south to the place of beginning.

LAGRANGE.

Lagrange. SEC. 47. The district of country within the following boundaries shall form and constitute the county of Lagrange, to-wit: Beginning on the State line where the line dividing ranges seven and eight intersects the same, thence east with the State line to the west line dividing ranges eleven and twelve, thence south with the line dividing townships thirty-five and thirty-six, thence west to the line dividing ranges seven and eight, thence north to the place of beginning.

LAPORTE.

Laporte. SEC. 48. The district of country within the following boundaries shall form and constitute the county of Laporte, to-wit: Beginning at the point on Lake Michigan where the State line between the States of Michigan and Indiana strikes the same, thence east with the said line to the centre of range one west, thence south with said line to the north-west corner of section twenty-two (22) in township thirty-seven north, of range one west, thence with the north line of said section and that of section twenty-three (23) to the north-

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east corner of said section twenty-three, (23) thence south with the section line until it shall strike the great Kankakee river, thence with said river to the centre of range one west, thence south to the line dividing townships thirty-four and thirty-five north, thence west to the great Kankakee river, thence down the middle of said river to the line dividing ranges four and five west, thence north to Lake Michigan, thence with the same eastwardly to the place of beginning: *Provided*, That the northern boundary shall extend to, and be the same as the northern line of the State.

MADISON.

Madison. SEC. 49. The district of country within the following boundaries shall form and constitute the county of Madison, to-wit: Beginning at the south-east corner of section two, township seventeen north, range eight east, thence north with said section line to the north-east corner of section eleven, township twenty-two, range eight east, thence west to a line drawn from the west to a point which will intersect a line running north from the north-east corner of Hamilton county, thence south to the south-west corner of section four, township seventeen, range six east, thence east to the place of beginning.

MARION.

Marion. SEC. 50. The district of country within the following boundaries shall form and constitute the county of Marion, to-wit: Beginning at the north-east corner of section fifteen, in township seventeen north, of range five east, thence south on the section line to the south-east corner of section twenty-two, in township fourteen north, of range five east, thence west to the south-west corner of section twenty-one, in township fourteen north, of range two east, thence north to the north-west corner of section four, township sixteen north, of range two east, thence north through the centre of sections thirty-two, twenty-nine, twenty, and seventeen, to the north-west corner of the north-east quarter of section seventeen, township seventeen, range two east, thence east to the place of beginning.

MARTIN.

Martin. SEC. 51. The district of country within the following boundaries shall form and constitute the county of Martin, to-wit: Beginning at the north-east corner of township five north, range three west, thence south to the north-east corner of section thirteen, township one north, range three west, thence west to the east fork of White river, thence down said river, with the meanders thereof, to the section line dividing sections twenty-three and twenty-four, township one north, range five west, thence north to the line

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dividing townships four and five north, thence east to the line dividing ranges four and five west, thence north to the line dividing townships five and six north, thence east to the place of beginning.

MONROE.

Monroe. SEC. 52. The district of country within the following boundaries shall form and constitute the county of Monroe, to-wit: Beginning at the line dividing townships six and seven north, at the south-east corner of section thirty-two, in township seven north, of range two east, thence north to the north-east corner of section seventeen, in said township and range, thence west to the south-east corner of section eleven, in township seven north, of range one east, thence north to the north-east corner of section two, in township ten north, of range one east, thence west to the south-east corner of section thirty-three, in township eleven north, of range two west, thence north to white river, thence down said river to the line dividing ranges two and three west, thence south with said range line to the south-west corner of section thirty-one, in township seven north, of range two west, thence east to the place of beginning.

MONTGOMERY.

Montgomery. SEC. 53. The district of country within the following boundaries shall form and constitute the county of Montgomery, to-wit: Beginning at the corners of sections thirty-three and thirty-four, on the township line dividing townships sixteen and seventeen north, range six west, thence north to the line dividing townships twenty and twenty-one north, thence east to the line dividing ranges two and three west, thence south to the line dividing townships sixteen and seventeen north, thence west to the place of beginning.

MORGAN.

Morgan. SEC. 54. The district of country within the following boundaries shall form and constitute the county of Morgan, to-wit: Beginning on the township line dividing townships ten and eleven north, where the line dividing ranges two and three east, crosses the same, thence west to the centre of range two west, thence north to the south-east corner of section sixteen, township twelve north, of range two west, thence west to the line dividing ranges two and three west, thence north to the south-west corner of section nineteen, in township fourteen north, of range two west, thence east to the line dividing ranges two and three east, thence south to the place of beginning.

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MIAMI.

Miami. SEC. 55. The district of country within the following boundaries shall form and constitue the county of Miami to-wit: Beginning at the south-east corner of section thirty-four, township twenty-five north, range three east, thence north to the line dividing townships twenty-nine and thirty, thence east to the south-east corner of township thirty north, range four east, thence east with the range line to the south-east corner of section thirty-four, township thirty north, range five east, thence south to the south-west corner of section thirty-five, township twenty-six north, range five east thence east to the south-east corner of section thirty-two, township twenty-six north, range six east, thence south to the line dividing townships twenty-four and twenty-five north, thence west to the place of beginning.

MARSHALL.

Marshall. SEC. 56. The district of country within the following boundaries shall form and constitute the county of Marshall, to-wit: Beginning at the north-east corner of section twenty-one, in township thirty-five north, of range four east, thence south to the line dividing townships thirty-one and thirty-two north, thence west to the meridian line, thence north to the north-west corner of section nineteen, in township thirty-five north, of range one east, thence east to the place of beginning.

NOBLE.

Noble. SEC. 57. The district of country within the following boundaries shall form and constitute the county of Noble, to-wit: Beginning at the north-east corner of township thirty-five, range eleven east, thence west to the line dividing ranges seven and eight east, thence south to the south-west corner of township thirty-three, range eight east, thence east to the south-east corner of township thirty-three north, of range eleven east, thence north to the place of beginning.

OHIO.

Ohio. SEC. 58. The district of country within the following boundaries shall form and constitute the county of Ohio, to-wit: Beginning at the Ohio river in the centre of the mouth of Laughery creek, and running up said Laughery creek, in the centre of the channel of the main creek with the meanders thereof, to where the same crosses the west boundary line of Dearborn county, commonly called the old Indian boundary line; thence southwardly on said old Indian boundary line, to where the same intersects the line dividing the counties of Dearborn and Switzerland; thence east on the section line to the Ohio river; thence up said river with the meanders thereof to the place of beginning.

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ORANGE.

Orange. SEC. 59. The district of country within the following boundaries shall form and constitute the county of Orange, to-wit: Beginning at the southwest corner of section eighteen, in township three north, of range two west, thence south to the south-west corner of section thirty, township one south, of range two west, thence east to the north-west corner of section thirty-three, in township one south, of range two east, thence north to the south-west corner of section sixteen, in township three north, of range two east, thence west to the place of beginning.

OWEN.

Owen. SEC. 60. The district of country within the following boundaries shall form and constitute the county of Owen, to-wit: Beginning at the south-east corner of township nine north, of range three west, thence west with the said township line to the south-west corner of section thirty-five, in township nine north, of range six west, thence north to the line dividing townships ten and eleven north, thence east to the north-east corner of section three, in township ten north, of range five west, thence north to the south-west corner of section fourteen, in township twelve north, of range five west, thence east to the south-west corner of section fifteen, in township twelve north, of range two west, thence south to the west fork of White river, thence down the same to the line dividing ranges two and three west, and thence south with said range line to the place of beginning.

PARKE.

Parke. SEC. 61. The district of country within the following boundaries shall form and constitute the county of Parke, to-wit: Beginning on the Wabash river where the line dividing townships thirteen and fourteen north crosses the same, thence east to the line dividing ranges five and six west, thence north to the line dividing townships sixteen and seventeen north, thence west to the south-west corner of section thirty-four, in township seventeen north, in range six west, thence north to the line dividing townships seventeen and eighteen north, thence west to the Wabash river, thence down the same to the place of beginning.

PIKE.

Pike. SEC. 62. The district of country within the following boundaries shall form and constitute the county of Pike, to-wit: Beginning on White river where the range line dividing ranges nine and ten west, crosses the same, thence south with said range line to where the line dividing township one north,

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and one south crosses the same, thence east to the north-east corner of section six, in township one south, of range nine west, thence south to the south-east corner of section seven, in the same range and township, thence east to the north-east corner of section sixteen, in said township and range, thence south till it strikes the Patoka river, thence east with said river to the line dividing sections four and five, in township two south, of range eight west, thence south to the south-west corner of section sixteen, in township three south, of range eight west, thence east to the south-east corner of said section, thence south to the south-east corner of section twenty-one, in the same township and range, thence east to the south-east corner of section twenty-one, township three south, range six west, thence north to White river, thence down the same, with the meanders thereof, to the place of beginning.

PERRY.

Perry. SEC. 63. The district of country within the following boundaries shall form and constitute the county of Perry, to-wit: Beginning on the Ohio river where the meridian line strikes the same, thence north to the line dividing townships three and four south, thence west to the line dividing ranges one and two west, thence north to the north-east corner of section thirteen, in township three south, of range two west, thence west to the line dividing ranges two and three west, thence south to the south-east corner of section thirteen, in township three south, of range three west, thence west to the line dividing ranges three and four west, thence south to Anderson river, thence down the same to the Ohio river, thence up the Ohio river to the place of beginning.

POSEY.

Posey. SEC. 64. The district of country within the following boundaries shall form and constitute the county of Posey, to-wit: Beginning on the Ohio river where the line between ranges eleven and twelve west strikes the same, thence north to the line dividing townships three and four south, thence west to the line dividing ranges twelve and thirteen west, thence north to the north-east corner of section thirty-six, in township three south, of range thirteen west, thence west to the Wabash river, thence down the same with the meanders thereof, to its junction with the Ohio river, thence up the Ohio river, with the meanders thereof, to the place of beginning.

PORTER.

Porter. SEC. 65. The district of country within the following boundaries shall form and constitute the county of Porter, to-wit: Beginning at a point on Lake Michigan where the line dividing ranges four and five west intersects the same,

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thence south to the Kankakee river, thence down the same to the centre line of range seven west, thence north to Lake Michigan, thence eastwardly with the lake to the place of beginning: *Provided*, That the northern boundary of said county shall be the same as the northern State line.

PUTNAM.

Putnam. SEC. 66. The district of country within the following boundaries shall form and constitute the county of Putnam, to-wit: Beginning at the south-east corner of section thirteen, in township twelve north, of range three west, thence north to the line dividing townships sixteen and seventeen north, thence west to the line dividing ranges five and six west, thence south to the south-west corner of section eighteen, township twelve north, of range five west, thence east to the place of beginning.

PULASKI.

Pulaski. SEC. 67. The district of country within the following boundaries shall form and constitute the county of Pulaski, to-wit: Beginning at the south-east corner of township twenty-nine north, range one west, thence west to the line dividing ranges four and five west, thence north to the line dividing townships thirty-one and thirty-two, thence east to the meridian line, thence south to the place of beginning.

RANDOLPH.

Randolph. SEC. 68. The district of country within the following boundaries shall form and constitute the county of Randolph, to-wit: Beginning at the Ohio State line at the north-east corner of township fifteen, range one west, thence west to the line dividing ranges eleven and twelve east, thence north to the line dividing townships twenty-one and twenty-two, thence east to the State line, thence south with said State line to the place of beginning.

RIPLEY.

Ripley. SEC. 69. The district of country within the following boundaries shall form and constitute the county of Ripley, to-wit: Beginning at the south-east corner of section thirty-one, in township six north, of range ten east, thence north to the Indian boundary line, thence north-eastwardly with said boundary line, to the line dividing sections seventeen and twenty, township ten, range twelve east, thence east to the Indian boundary line, thence southwardly with said line to a point thereon one mile north of the line dividing townships five and six, thence west to the north-west corner of section

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thirty-three, in township six, range twelve east, thence south to the line dividing townships five and six, thence west to the place of beginning.

RUSH.

Rush. SEC. 70. The district of country within the following boundaries shall form and constitute the county of Rush, to-wit: Beginning at the south-west corner of section twenty-seven, in township twelve north, of range eight east, thence east to the south-east corner of section twenty-eight, township twelve north, range eleven east, thence north to the line dividing townships fifteen and sixteen, thence west to the north-west corner of section three, in township fifteen north, range eight, thence south to the place of beginning.

SCOTT.

Scott. SEC. 71. The district of country within the following boundaries shall form and constitute the county of Scott, to-wit: Beginning at the south-east corner of section thirteen, township two north, range eight east, thence north to the north-east corner of section twenty-five, township three north, range eight east, thence west two miles, to the north-east corner of section twenty seven, thence north to the north-east corner of section fifteen, thence west to the north-west corner of section sixteen, thence north to the north-east corner of section eight, thence west to the north-west corner of same, thence north to the line dividing townships three and four north, thence west to the south-east corner of township four north, range seven east, thence north to the south fork of the Muscatituck river, thence down the same with the main channel thereof to the line dividing sections five and six, township three north, range six east, thence south to the south-west corner of section twenty-nine, township two north, range six east, thence east two miles, thence south one mile, to the line dividing townships one and two north, thence east one mile and a half, thence north one mile, thence east a half mile, thence north a half mile, thence east a half mile, thence north a half mile, thence east a half mile to the line dividing ranges six and seven east, thence north to the north-west corner of section nineteen, township two north, range seven east, thence east to the place of beginning: *Provided* further, that the south half of section five in township number three north, range eight east, is attached to said county.

SHELBY.

Shelby. SEC. 72. The district of country within the following boundaries shall form and constitute the county of Shelby, to-wit: Beginning at the south-east corner of section thirty-three, in township eleven north, of range eight east, thence north to the north-east corner of section four, in township

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fourteen north, of range eight east, thence west to the north-west corner of section two, in township fourteen north, of range five east, thence south to the line dividing townships ten and eleven, thence east to the place of beginning.

STARKE.

Starke. SEC. 73. The district of country within the following boundaries shall form and constitute the county of Starke, to-wit: Beginning at the north-east corner of township thirty-four, range one west, thence south to the south-east corner of township thirty-two, range one west, thence west to the line dividing ranges four and five west, thence north to the Kankakee river, thence up the middle of said river to the line dividing townships thirty-four and thirty-five north, thence east along said line to the place of beginning.

SPENCER.

Spencer. SEC. 74. The district of country within the following boundaries shall form and constitute the county of Spencer, to-wit: Beginning on the Ohio river at a line dividing sections twenty-five and twenty-six, township seven south, range eight west, thence north to Little Pigeon Creek, thence up the creek with the meanders thereof, to the line dividing townships four and five south, range six west, thence east to the south-east corner of township four south, range six east, thence north to the north-east corner of said township, thence east to the north-east corner of township four south, range four west, thence south to Anderson river, thence down said river, with the meanders thereof, to the Ohio river, thence down the Ohio river to the place of beginning.

STEUBEN.

Steuben. SEC. 75. The district of country within the following boundaries shall form and constitute the county of Steuben, to-wit: Beginning at the south-west corner of township thirty-six, range twelve east, thence east to the line of the State of Indiana, thence north with said line to the line dividing the States of Indiana and Michigan, thence west with the State line to the line dividing ranges eleven and twelve east, thence south to the place of beginning.

SWITZERLAND.

Switzerland SEC. 76. The district of country within the following boundaries shall form and constitute the county of Switzerland, to-wit: Beginning at a point on the Ohio river between fractional sections twenty-two and twenty-seven, in township three north, range one west, thence west to the old Indian boundary line, thence north with said line to the line dividing sections twenty-five and thirty-six, in township six north, of

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range twelve east, thence west to the north west corner of section thirty-three in township six north, range twelve east, thence south to the Ohio river, thence up said river with the meanders thereof to the place of beginning.

ST. JOSEPH.

St. Joseph. SEC. 77. The district of country within the following boundaries shall form and constitute the county of St. Joseph, to-wit: Beginning on the north line of Indiana where the centre line of range four east strikes the same, thence south to the south-east corner of section sixteen, township thirty-five north, of range four east, thence west to the meridian line, thence south to the south-east corner of section thirty-six, in township thirty-five north, of range one west, thence west to the south-west corner of section thirty-four, in the same township, thence north to the great Kankakee river, thence eastwardly, with the middle of said river to the line dividing sections thirteen and fourteen, in township thirty-six north, of range one west, thence north with said line to the north-east corner of section twenty-three in township thirty-seven north, of range one west, thence west with the north line of said section and that of section twenty-two in the same range and township, to the north-west corner of said section twenty-two, thence north to the State line, thence east with the same to the place of beginning.

SULLIVAN.

Sullivan. SEC. 78. The district of country within the following boundaries shall form and constitute the county of Sullivan, to-wit: Beginning on the Wabash river where the line dividing townships nine and ten north intersects the same, thence east to the line dividing ranges seven and eight west, thence south to the south-west corner of township six north, of range eight west, thence west to the line dividing ranges nine and ten west, thence due west to the Wabash river, thence up the river to the [place of] beginning.

TIPPECANOE.

Tippecanoe. SEC. 79. The district of country within the following boundaries shall form and constitute the county of Tippecanoe, to-wit: Beginning at the south-east corner of township twenty-one north, range three west, thence north to the line dividing townships twenty-four and twenty-five, thence west to the north west corner of section three, in township twenty-four north, of range six west, thence south to the line dividing townships twenty and twenty-one, thence east to the place of beginning.

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TIPTON.

Tipton. SEC. 80. The district of country within the following boundaries shall form and constitute the county of Tipton, to-wit: Beginning at the north-east corner of section thirty-six, in township twenty-three north, range two east, thence east to the north-west corner of section thirty-three, in township twenty-three north, range six east, thence south to the line dividing townships twenty and twenty-one, thence west to the line dividing ranges two and three, thence north to the place of beginning.

UNION.

Union. SEC. 81. The district of country within the following boundaries shall form and constitute the county of Union, to-wit: Beginning at the south-east corner of section thirteen, in township ten, range one west, thence west to the south-west corner of section thirty-six, in township thirteen, range thirteen east, thence north to the north-west corner of section twenty-five, township fifteen north, range thirteen east, thence east to the State line, thence south to the [place of] beginning.

VANDERBURGH.

Vanderburgh. SEC. 82. The district of country within the following boundaries shall form and constitute the county of Vanderburgh, to-wit: Beginning on the Ohio river where the range line dividing ranges eleven and twelve west strikes the same, thence north with said range line to the south-west corner of section eighteen, in township four south, of range eleven west, thence east to the line dividing ranges nine and ten, thence south to the line dividing townships five and six south, thence east to the north-east corner of section six, township six south, of range nine west, thence south to the Ohio river, thence down the same to the place of beginning.

VIGO.

Vigo. SEC. 83. The district of country within the following boundaries shall form and constitute the county of Vigo, to-wit: Beginning at a point on the Wabash river where the line dividing townships nine and ten strikes the same, thence east to the line dividing ranges seven and eight, thence north to the line dividing townships twelve and thirteen north, thence east to the south-east corner of section thirty-two township thirteen, range seven west, thence north to the line dividing townships thirteen and fourteen north, thence west to the State line, thence south with the State line to the Wabash river, thence down the same to the place of beginning.

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VERMILLION.

Vermillion. SEC. 84. The district of country within the following boundaries shall form and constitute the county of Vermillion to-wit: Beginning on the west bank of the Wabash river where the line dividing townships thirteen and fourteen north crosses the same, thence west to the State line, thence north with the State line to the line dividing townships nineteen and twenty north, thence east to the Wabash river; thence down the same with the meanders thereof, to the place of beginning.

WAYNE.

Wayne. SEC. 85. The district of country within the following boundaries shall form and constitute the county of Wayne, to-wit: Beginning at the south-west corner of section thirty two, township sixteen north, range twelve east, thence north to the township line dividing townships sixteen and seventeen east, to the south-east corner of section thirty-two, township seventeen, range twelve, thence north to the north-east corner of section twenty, township eighteen north of range twelve east, thence east to the State line, thence south with said line to the north-east corner of section twelve, township twelve north, range one west, thence west to the north-west corner of section twenty-five, township fifteen north, range thirteen east, thence south to the north-west corner of section thirty-six, in said township and range, thence west to the south-west corner of section twenty-seven, township fifteen north, of range twelve east, thence north to the line dividing townships fifteen and sixteen, thence west to the place of beginning.

WARRICK.

Warrick. SEC. 86. The district of country within the following boundary shall form and constitute the county of Warrick, to-wit: Beginning on the Ohio river where the sectional line running north and south one mile west of the line dividing ranges six and seven west strikes the same, thence north to Little Pigeon creek, thence up said creek, with the meanders thereof, to the Poke Patch fork, thence up the last mentioned stream, with the meanders thereof, to the line dividing townships four and five south, thence east to the line dividing ranges five and six west, thence north to the north-east corner of township four south, range six west, thence west to the south-west corner of section thirty-four, in township three south, of range six west, thence north to the north-east corner of section twenty-eight, township three south, range six west, thence west to the south-east corner of section twenty-one, in township three south, of range eight west, thence north to the north-east corner of the same

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section, thence west to the north-west corner of the same, thence south to the line dividing townships three and four south, thence west to the line dividing ranges nine and ten west, thence south to the line dividing townships five and six south, thence east to the north-east corner of section six, of township six south, and range nine west, thence south to the Ohio river, and thence up the same to the place of beginning.

WASHINGTON.

Washington. SEC. 87. The district of country within the following boundaries shall form and constitute the county of Washington, to-wit: Beginning at the south-west corner of section sixteen, in township one south, of range two east, thence due east to the summit of the Silver Creek Knobs, thence north-eastwardly with the extreme height of the same, between the waters of Silver Creek and Blue River, to a point on the line dividing the counties of Clark and Scott, where a due west line will strike the south-west corner of section twenty, in township two north, of range six east, thence north to the Muscatituck river, thence down the same and White river to where a sectional line running north from the beginning crosses said White river, thence south with said sectional line to the place of beginning.

WARREN.

Warren. SEC. 88. The district of country within the following boundaries shall form and constitute the county of Warren, to-wit: Beginning on the west bank of the Wabash river where the township line dividing townships nineteen and twenty north, of range nine west intersects the same, thence west to the range line dividing ranges nine and ten west, thence north to the township line dividing townships nineteen and twenty north, thence west to the State line, thence north with the State line to the township line dividing townships twenty-three and twenty-four north, thence east to the north-west corner of section three, in township twenty-three north, of range six west, thence south to the Wabash river, thence down the same, with the meanders thereof, to the place of beginning.

WHITE.

White. SEC. 89. The district of country within the following boundaries shall form and constitute the county of White, to-wit: Beginning at the north-west corner of section three, township twenty-eight north, range five west, thence south to the north-west corner of section thirty-four, in the same township, thence west to the north-west corner of section thirty-four, in township twenty-eight north, range six west, thence south to the line dividing townships twenty-four and

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twenty-five, thence east to the south-east corner of section thirty-two north, range three west, thence north to the north-west corner of section thirty-three, in township twenty-six north, range three west, thence east to the Tippecanoe river, thence up the same with the meanders thereof, to the line dividing townships twenty-six and twenty-seven, thence east to the line dividing ranges one and two west, thence north to the line dividing townships twenty-eight and twenty-nine north, thence west to the place of beginning.

WHITLEY.

Whitley. SEC. 90. The district of country within the following boundaries shall form and constitute the county of Whitley, to-wit: Beginning at the north-east corner of township thirty-two north, of range seven east, thence east to the line dividing ranges ten and eleven east, thence south with the line dividing said ranges ten and eleven, to the line dividing townships twenty-nine and thirty, thence west to the line dividing ranges seven and eight east, thence north with the range line to the place of beginning.

WELLS.

Wells. SEC. 91. The district of country within the following boundaries shall form and constitute the county of Wells, to-wit: Beginning at the north-west corner of section four, township twenty-eight, range thirteen east, thence west to the line dividing ranges ten and eleven, thence south to the line dividing townships twenty-five and twenty-six, thence west to the line dividing ranges nine and ten, thence south to the line dividing townships twenty-four and twenty-five, thence east to the south-east corner of section thirty-two, township twenty-five, range thirteen, thence north to the place of beginning.

WABASH.

Wabash. SEC. 92. The district of country within the following boundaries shall form and constitute the county of Wabash, to-wit: Beginning at the south-east corner of section thirty-four, township twenty-six north, range five east, thence north to the north-west corner of section twenty-three, township thirty north, range five east, thence east to the range line dividing ranges seven and eight, thence south to the line dividing townships twenty-nine and thirty, thence east to the north-east corner of section five, township twenty-nine north, range eight, thence south to the line dividing townships twenty-five and twenty-six, thence west to the place of beginning.

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Jurisdiction of courts in counties bordering on Ohio and Wabash.

SEC. 93. That the proper courts of the several counties in this State bordering on the Ohio river, and on the Wabash river as far up as said river forms the boundary line between this State and the State of Illinois, shall have jurisdiction of all offences committed against the penal laws of this State on said rivers, opposite to said counties respectively. Whenever any violation of the penal laws of this State shall be committed on either of the above named rivers, opposite to the line dividing any two counties bordering thereon, or so near to said line that it may be doubtful on which side of said line the offense was committed, the proper courts of either of the counties adjoining said line may take cognizance of said offense.

Boundary lines, how deemed to run.

SEC. 94. When any boundary line of any county is described as running east, west, north or south from any point, in a range, township, or section line, such boundary shall be deemed to run with and along such range, township, or section line, unless the contrary is obviously intended. All lines which in the boundaries of any county are clearly intended to be described by courses indicated by the magnetic needle, are respectively to be taken as the magnetic needle pointed at the several times when such lines were originally established.

Mid channel of stream, when to be dividing line of counties.

SEC. 95. Whenever two counties are separated from each other by a river or creek, the middle of the channel of such river or creek shall be the division line between the same, unless otherwise provided in the description of the boundaries of such counties.

Service of process on Ohio river.

SEC. 96. Whenever any part of the boundary of any county is the Ohio river, all process issuing to the officers of such county may be served on the said river, so far as the same is the boundary of this State.*

*When land is bounded by the Ohio river on the Indiana side, the owner's right extends to low water mark.—*Stinson* vs. *Butler et al.*, 4 Blackf., 285.

CHAPTER 15.

AN ACT providing for the incorporation of Bridge Companies.

[APPROVED MARCH 9, 1852.]

Company, how organized.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any number of persons may form themselves into a corporation for the purpose of constructing and owning a bridge across any river, creek or other water course, by complying with the following requirements: They shall unite in articles of association, setting forth the

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name they assume, the water course, and place where the said bridge is to be built or constructed, the amount of capital stock, and the number of shares into which it is to be divided; the names and places of residence of the subscribers, and the amount of stock taken by each, shall be subscribed to said articles of association. Whenever the stock subscribed shall amount to a sum sufficient to complete the bridge, according to the estimate of a practical engineer, copies of the articles of association shall be filed in the office of the recorder of the county in which the bridge may be situated: *Provided, however*, That no company thus organized shall be authorized to erect any such bridge until the consent of the board of commissioners of the proper county shall have been obtained to the erection of the bridge at the place proposed; and if the stream over which any bridge is proposed to be constructed is the dividing line of two counties, then the consent of the board of commissioners of each county interested shall first be obtained.

Proviso.

Capital may be increased.

SEC. 2. It shall be lawful for any bridge company heretofore organized, or which may hereafter be organized for the purpose of erecting and maintaining toll bridges from time to time to increase their capital stock for the purpose of completing any such bridges, keeping the same in repair, rebuilding the same, or for protecting the banks of any stream over which the same may be erected, from the action of the water, or for any other purpose properly connected with the object of the organization; but before any increase in the capital stock of any such company shall be made, said company shall file in the office of the recorder of the county or counties in which any such bridge may be situated, a statement showing the name of any such company, the water course, and place where the said bridge is built, or to be built; the amount of the proposed increase of the capital stock of any such company, and the number of shares in which it is to be divided; but no increase in the capital stock shall be made unless by the consent of so many stockholders thereof as shall be the owners in the aggregate of at least three-fifths of the original stock.

Proviso.

Directors, how elected.

SEC. 3. Not less than three nor more than seven directors shall be elected by the stockholders of every such corporation, who shall hold their office for one year, and until their successors are in like manner elected. Notice of the first election for directors shall be given by two weekly publications in some newspaper printed nearest to said bridge.

Number of directors increased.

SEC. 4. It shall be lawful for any bridge company heretofore organized to increase or reduce the number of the directors thereof: *Provided, however*, That the number of the directors of any such company shall in no case be increased to a number exceeding seven nor reduced to a number less than three.

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Board may organize by choosing Pres., &c.

SEC. 5. Any board of directors elected under the provisions of this act, may organize by choosing a president and secretary from their own body, and from thenceforth shall be considered a body corporate and politic, by the name and style of ——— Bridge Company, and shall be capable of suing and being sued, pleading and being impleaded, defending and being defended, answering and being answered unto, in any court of competent jurisdiction.

May have and own a seal, hold property, and have the benefit of a writ of *ad quod damnum*.

SEC. 6. Any corporation under the provisions of this act, may have and use a common seal, and the same to alter or change at pleasure, and shall be capable of purchasing, holding, using and conveying any property or estate, real or personal, that may by them be deemed necessary as an appendage to any bridge as aforesaid, and may have all the benefit of the writ of *ad quod damnum* according to law.

Keep books of accounts.

SEC. 7. The directors shall, at all times, keep or cause to be kept, at some proper place, proper books of accounts, in which shall be entered all the transactions of the corporation, which books shall, at all times, be subject to the inspection of the stockholders of said company.

Not to contract debts greater than stock.

Each stockholder liable.

SEC. 8. The said corporation shall not contract debts so as to be liable, at any one time, to a greater amount than the capital stock of the same; and each stockholder shall be liable for debts contracted by said company during the time he was or is a stockholder, on a failure of sufficient property belonging to said company.

By-laws.

SEC. 9. The officers so elected shall immediately provide a code of by-laws for the government of the corporation, and management of its prudential concerns, and present the same to the company for their adoption, which by-laws, if not repugnant to the laws of the State, and when approved by a majority of the voters, shall become a law, and be binding on all parties concerned, till altered or amended by a vote of any annual meeting thereof. A copy of which by-laws shall be posted up in some conspicuous place, or places, on, in, or about the toll house of said company, and also in like manner a statement of the rates of toll shall be posted up, and shall be kept constantly posted up in some like conspicuous place.

Vacancies, adjournments and appointments.

SEC. 10. The president and directors shall fill all vacancies that may occur in their body; they may sit on their own adjournments, or a call of the president, and when the president or secretary are absent, the directors may appoint one in their stead.

Rates of voting.

SEC. 11. At all elections for directors, each stockholder shall be entitled to vote in person or by proxy, in manner and form prescribed in the by-laws, and according to the following scale: For each share not exceeding ten, one vote; for every two shares above ten and not exceeding twenty, one vote; and for every four shares over twenty, one vote.

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Certificates of stock.

SEC. 12. Certificates of stock shall be given to stockholders, which shall be evidence of stock held; they shall be signed by the president and secretary; the stock shall be transferable on the books of the corporation only, but such stock shall at all times be held by the corporation for any delinquency in the payment of any assessment.

Penalty for hindering passenger, or demanding illegal toll.

SEC. 13. If any toll-gatherer shall unnecessarily hinder or delay any passenger at the gate, or shall demand and receive more than legal toll, the said corporation shall forfeit for every such offense the sum of five dollars for the use and benefit of such person or persons as have been thus defrauded or detained.

Penalty for injuring bridge.

SEC. 14. If any person shall wilfully impair or injure any bridge, such person so offending shall forfeit and pay to the corporation double the costs of repair, with damages and costs of suit, to be recovered before any court of competent jurisdiction.

Penalty for passing without paying toll.

SEC. 15. If any person shall forcibly pass any bridge without paying toll, with intent to defraud any such company, such person so offending shall forfeit and pay to the corporation a penalty of three dollars with costs of suit, to be recovered before any justice of the peace in the proper county.

Proceedings to recover penalties.

SEC. 16. In all actions brought to recover any penalty or forfeiture in and under this charter, or the by-laws made in pursuance of this act, it shall be lawful to declare in debt generally for such penalty or forfeiture, stating the section of this act or the by-law under which the penalty or forfeiture is claimed, and to give the special matter in evidence, and the defendant in like manner may plead the general issue to such action, and give all matters of defence in evidence under that issue.

Bridge companies now in operation to have the benefits of this act.

SEC. 17. All bridge companies now in existence in this State may have and possess all the benefits of this act, by complying with the conditions herein contained.

Toll.

SEC. 18. Whenever any bridge shall be completed under the provisions of this act, said corporation may erect a toll-gate at either end of said bridge, and demand and receive a toll not exceeding such rates as shall be fixed by such company, and approved by the county commissioner of the county wherein such bridge may be situate. But all persons going or returning from any election, place of religious worship, and all funeral processions, shall be exempt from paying toll.

Proviso.

Not to obstruct the navigation of a river.

SEC. 19. Any such corporation shall not, at any time nor in any manner, obstruct the navigation of any navigable stream by the construction of such bridge.

Emergency.

SEC. 20. Inasmuch as certain bridge companies already organized are desirous of availing themselves of the provisions of this act, before the same shall be published and circulated in the several counties of the State with the other laws, an emergency is declared to exist that the same shall take effect immediately, this act therefore shall take effect and be in force from and after its publication in the State Sentinel, State Journal and Statesman.

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CHAPTER 16.

AN ACT to provide for the erection and repair of Bridges.

[APPROVED MAY 22, 1852.]

Be it enacted by the General Assembly of the State of Indiana: SECTION 1. The township trustees of any township, if the public convenience require it, shall cause bridges to be built over water courses in such township, after having caused surveys and estimates thereof to be made; and for this purpose, on a day designated, of which notice shall be given to the supervisors of such township, may call out all the persons liable to work on highways in such township, and require them to erect such bridge; and when such supervisors shall receive such notice, they shall forthwith notify such persons thereof. Township trustees to have bridges erected.

SEC. 2. But instead of such labor such trustees may expend any money in the township treasury not otherwise appropriated, in the erection of such bridges; and after having obtained the consent of a majority of the voters of the township thereto, may assess a tax on all the real and personal property of such township, to erect such bridges; and for the purpose of obtaining such consent, such trustees shall cause the clerk of such township to give twenty days' notice that a poll will be opened on a day mentioned, at one of the places of holding elections in such township to be designated in such notice, when and where the qualified voters of such township may vote for or against a tax for the erection of such bridges, such election to be conducted by the officers of elections of such township and in the manner in which elections in such townships are held; and if a majority of the votes polled at such elections are in favor of such tax, the same shall be assessed by such trustees, and collected by the treasurer, who for this purpose may procure from the tax duplicate of the county an authenticated transcript of the taxable property of such township, and such treasurer in collecting such tax shall have the same power and be governed by the same regulations provided by law for county treasurers and collectors in collecting the county revenue. Money may be expended instead of labor. Tax may be levied.

SEC. 3. When such tax is so collected, after having given thirty days' notice thereof by posting up notices in three public places of such township, or by publication in a newspaper of such county, shall receive sealed proposals for the erection of such bridges; but such trustees shall require the contractor to give bond and surety for the due performance of his contract; and shall make such regulations in reference to payments, and kinds of bridges as to them shall seem proper. Trustees shall let out on contract. Contractor to give bond.

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May receive donations, and ask county board for appropriation for bridges, &c.

SEC. 4. Such trustees shall receive and appropriate all donations for the erection and repair of bridges, and when any such bridge is of general importance to the county, such trustees may petition the board of commissioners of the county for an appropriation to erect such bridge, and if such board shall make such appropriation, the amount thereof shall be paid over to the treasurer of such township, who shall appropriate the same under the direction of such trustees.

Proceedings when stream to be bridged is boundary line between counties.

SEC. 5. Whenever the stream over which any such bridge is to be erected, is the boundary between two counties, upon application therefor to the board of commissioners of either county, such board may make an order for calling an election as hereinbefore provided, in the township of such county, in which such stream is situate, to determine whether a tax shall be assessed for the erection of such bridge, or such board may make an appropriation from the treasury of such county therefor to be expended as provided in case of bridges within such township; and such board shall cause notice thereof to be given the board of commissioners of the other county interested, who shall cause like proceedings to be instituted in such county; and whenever it is ascertained that the commissioners of both counties have made an appropriation, or the voters of both townships interested have decided in favor of a tax, the erection of such bridge shall be let out under the direction of the trustees of the township in the county where such application is first made; but the tax levied or the appropriation made shall be equal in both counties, and payments to the contractor shall be made equally by such counties; such taxes to be collected in the manner hereinbefore provided.

When boundary between townships.

SEC. 6. If the water course over which a bridge is to be erected is the boundary between two townships of the same county, the tax shall be levied in each township, but the contract shall be made under the direction of the trustees first applying therefor to the board of commissioners; and on any such application such commissioners may cause an election to be held in each township to determine whether a tax shall be levied, and if a majority of the voters in each township shall decide in favor of it, such tax shall be collected by the treasurer of each township in the same manner as hereinbefore provided; and such commissioners may make an appropriation out of the county treasury for the erection of such bridge, which shall be disbursed under the direction of the township first applying for such bridge.

Trustees may authorize any person to build, reserving right of purchase, &c.

SEC. 7. Such trustees may authorize any person to build any such bridge, and to charge toll thereon in payment, but they shall reserve the right to purchase such bridge by paying the sum expended in its erection with ten per centum thereon; but in all such cases the toll shall be regulated by such trustees.

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SEC. 8. The trustees of any township may charge toll on any bridge erected in such township to pay the cost of erecting the same; but in no case shall such tolls be continued after the sum expended in such bridge shall have been derived from such toll. May charge toll, how long.

SEC. 9. The trustees of such township shall cause all bridges therein to be kept in repair, and shall cause the supervisor of the proper road district to keep up in a conspicuous place at each end of any bridge in his district whose chord is not less than twenty-five feet, the following notice in large English characters: "One dollar fine for riding or driving on this bridge faster than a walk." And if any person shall ride or drive over any such bridge faster than a walk, for any such offence, he shall forfeit and pay one dollar to be recovered by the proper supervisor before any justice of the peace of the county and to be paid into the treasury of the township. Repairs, notice, &c.

SEC. 10. If any person shall wilfully injure any such bridge, he shall for every such offence forfeit treble the damages legally ascertained, to be recovered by the supervisor as provided in the preceding section. Penalty for injury of bridge.

CHAPTER 17.

AN ACT for the Incorporation of Cities.

[APPROVED JUNE 18, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That all towns having a population of three thousand s ouls and upwards, shall, in addition to the powers they already possess, by virtue of their incorporation, upon complying with the provisions of this act, be incorporated cities with the rights and privileges herein conferred. Towns of 3,000 inhabitants may be incorporated cities.

SEC. 2. Whenever one third of the voters of any incorporate town, so far as the number can be estimated, shall petition the board of trustees thereof, to be incorporated as a city, such board by an order or resolution to that effect entered upon their order book, shall direct the marshal by a proper warrant, furnishing him with the necessary forms, to take the census of all persons who were residents within the corporate limits of such town, at least forty days anterior to the date of such order or resolution. Census to be taken.

SEC. 3. The marshal, with the concurrence of said board of trustees may appoint assistants, and shall within sixty days from the time of receiving such warrant, make full return Marshal to make return in 60 days.

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under oath to said board, of the resident population in such town as aforesaid.

Notice of opening of a poll.

SEC. 4. If the return shall show a population of three thousand persons or more, the trustees within ten days thereafter, shall publish a notice to the voters of such town, as in other corporation elections, stating that on a day and at a place therein named, a poll will be opened to determine whether such town shall be incorporated as a city.

Officers of election, and ballot box.

SEC. 5. The trustees shall appoint three reputable voters in each ward, one to act as inspector, and two as judges of election therein, and the persons thus appointed shall choose a clerk of such election. Such trustees shall also procure and deliver to such inspector, at least one day prior to such election a ballot box, which shall thereafter be retained in such ward. If such inspector or judges, or either of them or the clerk, after appointment and acceptance thereof, neglect or refuse to serve, such inspector or clerk, shall forfeit and pay for the use of such city any sum not exceeding fifty dollars, which shall be recoverable in an action at law; and the electors being met on the day appointed, may choose by voice such inspector, judges, or clerk, as may be necessary to organize the board.

Election, and return thereof.

SEC. 6. Such election shall be governed by the same rules as other corporation elections; and the ballots of the voters shall have thereon the word "yes" or the word "no;" and if a majority of the ballots given at such election have thereon the word "no," the voters of such town shall be deemed not to have consented to its incorporation as a city, and no further proceedings shall be had in relation thereto: but if a majority of such ballots shall have thereon the word "yes," the inspectors shall make a statement showing the number of votes given, the number having the word "yes," and the number having the word "no" thereon; and such statement shall have attached thereto the affidavit of such trustees verifying the truth of the same, and within five days after such election, shall be filed in the office of the clerk of the circuit court of the proper county. The clerk shall make a record thereof, for which he shall receive the same fee as is paid him for like services in other cases.

Record of return conclusive evidence of incorporation.

SEC. 7. Such town shall thereafter be deemed an incorporated city with the powers and franchises appertaining thereto, and the record in the office of the clerk as aforesaid shall be held in all courts as conclusive evidence of such incorporation in any suit pending therein.

Wards.

SEC. 8. The trustees of such town shall within five days after the filing of such statements, divide the city into not less than five wards; but no ward shall contain less than four hundred inhabitants; and they shall also, within the time aforesaid, cause to be given to the voters thereof, ten days' notice by publication in one or more newspapers printed in such city, and by posting copies of the same, in three

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public places in each ward, that an election will be held in each of the several wards on a day at the places therein named for the election of the city officers specified in such notice.

Officers of the city.

SEC. 9. There shall be chosen at such election, and on the first Tuesday in May of each year, thereafter, a mayor, two councilmen from each ward, by the voters thereof, a clerk, assessor, treasurer, civil engineer, street commissioner and marshal, who shall hold their respective offices one year, and until their successors are chosen and qualified. If in the opinion of the common council the interests of the city require a city attorney, such officer shall be elected for the same term and in the same manner.

Oath of officers of election.

SEC. 10. Before the opening of the polls on the day of such election, the inspector and judges thus appointed, and the clerk, shall each and severally be sworn by an officer authorized to administer oaths to the faithful discharge of their respective duties as officers of such election.

Laws governing elections.

SEC. 11. All elections of such cities shall be governed by the laws in force regulating township and other elections, and the voters therein shall have the like qualifications and be subject to the same restrictions and liabilities.

Canvass of votes.

SEC. 12. When the poll of any such election is closed, the inspector and judges thereof in each of said wards, shall immediately proceed to canvass the votes there given, and shall make out under their hands a statement specifying the number of votes each person voted for has received, and the office he was designated thereby to fill, and said statement, together with the poll list and one of the tally papers, shall be deposited with the inspector, or if unable to further serve, then with one of the judges selected by such board of election.

Determination of election by inspectors.

SEC. 13. The inspector named in such appointment, if at the first election, or the inspector appointed as hereinafter provided, if at a subsequent election of the several wards, shall, on the day next following the same, meet at the common council room; and upon an inspection of the statements aforesaid, determine the persons having the highest number of votes for each of the several offices voted for, and thereupon shall make and sign a certificate setting forth the names of the persons voted for, and for what office; the whole number of votes given for each of the several offices, and the person having the highest number therefor, and shall declare the persons elected to the same. Such certificate shall be filed with the clerk of the corporation. Should two or more persons have an equal and the highest number of votes for the same office, such board of inspectors shall certify the fact to the trustees or common council, as the case may be, who shall immediately give notice as in other elections, for a new election, specifying the office to be filled thereby, the ward, if a councilman, in which the poll is to be opened.

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Clerk to notify person elected.

SEC. 14. It shall be the duty of the clerk of such municipal corporation, within twenty-four hours after filing the certificate of the board of inspectors in his office as provided in the preceding section, to notify, either by personal service or by leaving a copy of the same at the usual place of residence, each and all of the persons elected to fill the said offices.

Penalty against persons failing to serve.

SEC. 15. Any person thus elected who shall not, within five days after being notified of the same, take and subscribe the oath of office, before some proper officer, and file the same with the clerk of such corporation, shall be deemed as having refused to serve, and shall forfeit for the use of such city therefor the sum of ten dollars.

Appointment of inspectors, judges, and clerk.

SEC. 16. The common council shall for every subsequent election appoint, by resolution, an inspector and two judges therefor, in each of the several wards of the city; but the persons thus appointed shall be residents and voters of such ward, and when convened as a board of election, shall choose the clerk thereof.

Vacancies.

SEC. 17. Vacancies in the office of mayor, clerk, or councilman, occurring in any manner, may be filled by special election ordered by the common council, and conducted in the same manner as at the annual election therefor. Vacancies in all other offices shall be filled by the common council.

OF THE POWERS AND DUTIES OF THE CITY OFFICERS.

Powers and duties of mayor.

SEC. 18. It shall be the duty of the mayor to see that the laws of this State, and the by-laws and ordinances of the common council be faithfully executed; he shall be a conservator of the peace, and as such shall have within the city limits the powers conferred upon sheriffs of counties, for that purpose; to exercise supervision over subordinate officers, and examine all complaints for official neglect or misconduct; to recommend to the common council such measures as he deems for the public good. He shall sign all commissions, licenses, and permits, granted by the common council, and shall perform such other duties as the nature of his office requires. He shall have the custody of the corporate seal, and may take and certify under the same the proof and acknowledgment of deeds and other instruments of writing, which shall be good in any court of this State without further authentication. He may also take and certify depositions and affidavits, and the same shall be of the like force and effect in any court aforesaid. He shall have within the limits of such city the jurisdiction and powers of a justice of the peace in all matters, civil and criminal, arising under the laws of this State, and for crimes and misdemeanors, his jurisdiction shall be co-extensive with the county. He shall have exclusive jurisdiction of all prosecutions for violations of the by-laws and ordinances of the city. In all other respects he

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shall perform the duties of a justice of the peace, and shall be entitled to the same fees. He shall give bond payable to the State of Indiana in any penal sum not less than three thousand dollars, to be approved by the clerk of the circuit court, with freehold security, conditioned for the faithful performance of his duties as mayor, and all other duties herein required, and file the same with the clerk of the circuit court of the proper county within the time directed by law for justices of the peace. He may in addition to his fees herein provided, receive such salary payable quarterly, as the common council shall, by resolution, order and direct.

Shall keep a docket.

SEC. 19. The mayor shall keep a docket as justices do, and in case of his absence from the city for the space of five days, or of inability in consequence of sickness or other cause for a like period, shall, prior to his departure in the first case, or at the expiration of five days in the latter instance (if his inability still continue) deposit or cause to be deposited his docket with any justice of the peace within said city; such justice shall, during the mayor's absence or disability, be invested with and exercise the judicial powers and authority of said mayor, and be entitled to his fees and emoluments therefor.

In case of vacancy in the office of mayor by death, resignation, or otherwise, the council shall deposit the mayor's docket in the hands of some justice in said city, who shall act as, and have all the powers of the mayor until such vacancy can be supplied by special election; and the official bond of such justice shall extend to and embrace all his acts while acting as mayor.

Duties of clerk.

SEC. 20. The clerk shall have the custody of all books and papers belonging to such municipal corporation. He shall make record of all proceedings of the common council, whose meetings it shall be his duty to attend. Copies of papers, and transcripts from the records, certified by him under the corporate seal, shall be evidence of the matters therein contained in all courts of this State, and he shall be entitled therefor, except when ordered by the city council, the same fees as are allowed to the clerk of the circuit court for similar services. He shall countersign all licenses, permits, treasury warrants, and all other official papers of the common council, directing acts to be done or duties performed.

Duties of assessor.

SEC. 21. The assessor shall, before the first Monday of June, in each year, unless otherwise directed by the common council, make out a full and fair list of all persons and property liable by law, to taxation, arranging the names in alphabetical order, and setting opposite each name in appropriate colums, the real and personal property assessed, with the description and value thereof.

He shall make out a separate list of such other property or thing as the common council shall, in their by-laws, direct to be specifically taxed.

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Said assessment roll shall be completed at the time above indicated, and return made thereof to the clerk of the city, unless by an order of the common council, further time be given him. He may, with the concurrence of the common council, appoint one or more assistants who shall be sworn in like manner as other officers to well and faithfully perform the duties thereof. Such assessor and assistants shall have the same powers, and be subject to the same provisions of the same law, as the assessors for the listing of real and personal property for State and county purposes.

Duties of street commissioner.

SEC. 22. It shall be the duty of the street commissioner, under the direction of the common council, to superintend the streets, alleys, market spaces, landings, the construction, repairs, cleansing and lighting the same, the bnilding of sewers and drains, the purchase of the necessary implements of labor, and the employ of laborers, and shall perform all other duties incident to his office.

Powers and duties of marshal.

SEC. 23. The marshal of such city shall be the chief ministerial officer of the corporation, and is hereby invested with the powers of a constable therefor. He shall execute and return all processes directed to him by the mayor, and shall attend the sittings of his court. Such processes may be served by himself or deputy in any part of the county.

He shall suppress all riots, disturbances, and breaches of the peace, and apprehend persons guilty of the same. With the consent of the common council he may appoint one or more deputies, being responsible for the correct discharge of their duties.

Duties of Treasurer.

SEC. 24. The treasurer, in addition to the duties hereinafter prescribed, shall receive all moneys belonging to the city, and keep an account of all receipts and expenditures, in such manner as the common council shall direct. All moneys paid by him as treasurer, shall be drawn in pursuance of an order of the common council, signed by the mayor, or presiding officer, and countersigned by the clerk. He shall exhibit to the common council, at least fifteen days before any annual election, a full account of receipts and expenditures since last report and the condition of the treasury.

Duties of civil engineer.

SEC. 25. The civil engineer shall prepare plans, specifications and estimates, when thereto directed by the common council, of proposed public improvements; and shall superintend the opening of streets and the preservation of the true lines thereof, and perform all other duties appertaining to his office.

Duties of other officers.

SEC. 26. All other officers elected or appointed, shall perform the duties incident to their respective offices, as required by this act and the by-laws and ordinances of such city, made in pursuance thereof.

Official bonds.

SEC. 27. The clerk, assessor, street commissioner, treasurer, and marshal, before entering upon the duties of their respective offices, shall each execute a bond to the State of

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Indiana in such penal sums, and with such sureties as the common council shall direct and approve, conditioned for the faithful performance of duty, and the payment of all moneys by them received according to law, which shall be filed with the clerk; except such clerk's bond, which shall be filed with the treasurer of the city. The bond of the treasurer shall be in double the amount [of] the estimated tax duplicate of the current year.

THE COMMON COUNCIL, ITS POWERS AND DUTIES.

Common council, when to meet, &c.

SEC. 28. The mayor and councilmen of such city shall constitute the common council; and shall meet within ten days after the annual election, and at such other times as they shall by resolution direct. The mayor shall preside, or if absent, one of the councilmen chosen therefor. The mayor shall have a casting vote when a tie, but not otherwise.

Regular meetings, quorum, minutes, &c.

SEC. 29. The common council shall hold stated meetings at least twice in each month, and the mayor, or any five councilmen may call special moetings, a majority of all the members to which the wards are entitled shall be a quorum, and the minutes of every such meeting shall be kept by the city clerk, which shall be open to public inspection.

Fire department, board of health, sealer of weights and measures, and supervisors.

SEC. 30. At every such annual meeting, the common council shall appoint, by ballot, a chief engineer of the fire department and two assistants, three commissioners to form a board of health, a sealer of weights and measures, and as many supervisors of streets, to act under the direction of the street commissioner, as shall be necessary, and all other officers which the by-laws may create or require.

Corporate seal.

SEC. 31. Each city council shall cause to be provided a corporate seal; around the margin of which shall be the name of the city, and in the centre thereof the words "city clerk," which shall be affixed to all transcripts, orders or certificates needing authentication.

Excise, licenses and penalties.

SEC. 32. The common council shall be commissioners of excise in and for such city; all licenses granted by said council shall be signed by the mayor and attested by the clerk, and all penalties imposed for the violation of any by-law or ordinance shall be prosecuted by them, and when recovered shall be paid to the treasurer of the city.

To keep open &c., streams.

SEC. 33. They shall have power to keep open and preserve the course of rivers and streams passing through or bordering upon the corporate limits of any such city; to prevent encroachment or injury to the banks thereof, or casting into the same offal, dead animals, logs, or rubbish.

To take down buildings liable to fall.

SEC. 34. They may take down any building or other structure liable to fall, and endangering life or property, if the owner or agent thereof, after five days' notice, fails to repair or remove the same; and the owner of such premises shall

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be liable to an action for the expenses of the removal of the building or structure.

Finances, real and personal property, by-laws and ordinances.

SEC. 35. They shall have the management and control of the finances of the city, and of all property, real and personal, belonging thereto: and shall have the additional powers herein provided, and may make and publish by-laws and ordinances necessary to enforce the same. The common council shall have power to pass ordinances:

First. To regulate or prohibit the use of hand organs, or instruments of an annoying character, or other music of itinerant performers in the streets, lanes, alleys or public places of the city.

Second. To fill up or drain grounds whereon water has or may become stagnant, at the expense of the owner thereof.

Third. To prevent and regulate the use of fire-arms, fire works, or other sports, or other thing or practice tending to endanger person or property.

Fourth. To direct the location of tallow chandleries, soap factories, and other buildings or structures, and prohibit the erection of such buildings, or the continuance of noxious trades or business therein, whenever the health or welfare of the city shall require the same.

Fifth. To establish cemeteries or burial places within or without the city limits, and to provide for the sanctity of the dead.

Sixth. To establish quarantine regulations.

Seventh. To preserve peace and good order, prevent vice and immorality, and quell riots and disorderly assemblages.

Eighth. To establish and regulate the police of the city.

Ninth. To suppress gaming, and gaming houses, and houses of ill fame; to prohibit and destroy instruments and devices for gaming, and restrain fraudulent practices within said city.

Tenth. To compel the owner or occupant of any buiding that is filthy or unwholesome, to cleanse and abate the same.

Eleventh. To direct the location of markets and slaughter houses.

Twelfth. To regulate and restrain theatrical exhibitions, public shows, and other exhibitions, for which money is demanded and received; provided that lectures on scientific, historic, benevolent, or literary subjects, and the apparatus for the elucidation of the same, and specimens of the fine arts, shall not be deemed within the provisions of this section.

Thirteenth. To prevent immoderate driving or riding, and cause the person guilty of the same to be stopped thereat, by any citizen of such city.

Fourteenth. To prevent the encumbering of streets, squares, sidewalks and crossings, with vehicles or any other substance or materials whatever, interfering with the free use of the same.

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Fifteenth. To regulate the time and places of bathing in the rivers, or other public waters of such city.

Sixteenth. To restrain and punish vagrants, mendicants, street beggars, and common prostitutes.

Seventeenth. To impound cattle, horses, swine, or other animals running at large, and sell the same for the penalty and costs of keeping.

Eighteenth. To prevent the deposit of any unwholesome substance within the city limits, and punish persons guilty of the same; and to remove or destroy putrid animal or vegetable matter therein: if the person occupying the premises fail to do so upon notice given, the city shall have an action against him.

Nineteenth. To keep clean the side-walks.

Twentieth. To regulate the ringing of bells, and crying of goods, and restrain street hawking and peddling.

Twenty-first. To remove persons having infectious or pestilential diseases.

Twenty-second. To direct the keeping and returning of bills of mortality, and provide penalties for the neglect of any person in relation to the same.

Twenty-third. To construct and establish works for furnishing the city with wholesome water, and for that purpose may go beyond the city limits, and exercise full jurisdiction, and all necessary powers therefor.

Twenty-fourth. To appoint watchmen and prescribe their duties.

Twenty-fifth. To establish and regulate public pounds.

Twenty-sixth. Concerning the lighting of streets, public grounds and buildings.

Twenty-seventh. Concerning the duties of all officers appointed by the common council, and their compensation.

Twenty-eighth. Concerning the public property, market, and sales of meat, fish and vegetables.

Twenty-ninth. Concerning the protection and use of fire engines, hose, hooks, and ladders.

Thirtieth. To regulate the selling, weighing, and measurement of hay, wood, and coal.

Thirty-first. To prevent the erection of wooden buildings in such part of the city as they think proper.

Thirty-second. To erect and establish market houses and places, engine houses, school houses, jail, work house, and house of refuge.

Thirty-third. To establish and construct wharves, docks, piers and basins, and to regulate landing places, and fix the rates of landing, wharfage and dockage, and provide for the appointment of harbor and wharf masters, and port wardens.

Thirty-fourth. To establish a board of health, and invest it with the necessary powers.

Thirty-fifth. To estalish stands for hackney coaches, cabs, and omnibuses, and enforce the observance and use thereof,

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and fix the rate and prices for the transportation of persons and property from one part of the city to another.

Jurisdiction of council.

SEC. 36. For the removal and abatement of nuisances, to carry out and enforce sanitary regulations, and for the apprehension of vagrants, or disorderly persons, the common council shall have jurisdiction one mile beyond the corporate limits of such city.

Infirmary for the poor.

SEC. 37. The city council shall have power to erect and establish, to maintain and regulate an infirmary for the accommodation of the poor of such city, either within the limits of such city or within the county in which it may be situate; and for such purpose may purchase or hold any real estate that may be deemed necessary; the management and government of any such infirmary, and the granting of outdoor relief to the poor, under such rules and regulations as the council may prescribe, shall be vested in a board of three directors, to be elected by the city council, and hold their offices for the term of three years, but it shall be so provided that one of said directors shall be elected annually; the city council may elect, or the said directors shall appoint an overseer in each ward, who shall perform such duties in respect to the care of the poor, and their removal to said infirmary, as the city council may prescribe.

To enforce the observance of by-laws, &c.

SEC. 38. The common council shall have power to make other by-laws not inconsistent with the laws of this State, and necessary to carry out the objects of the corporation; and enforce the observance of all by-laws and ordinances, by enacting such penalties for their violation not exceeding fifty dollars for any one offence; which may be recovered in an action at law, with costs, as they shall deem right and proper.

Publication of by-laws.

SEC. 39. Every by-law imposing a penalty or forfeiture for the violation thereof, shall, before the same takes effect, be published two weeks successively in some newspaper printed in the city: *Provided*, That in cases of insurrection, riot, pestilence, conflagration, or other impending danger requiring the immediate operation of such ordinance, it shall take effect as soon as proclamation is made thereof by such common council, and posted at five public places in each of the wards of such city.

Suits to be brought in corporate name.

SEC. 40. All actions brought to recover any penalty or forfeiture incurred under this act, or by laws made in pursuance of it, shall be brought in the corporate name of "the city," and recoveries upon the same, when collected, shall be paid into the treasury of such city. The process in every such action shall be a warrant.

May commit to jail.

SEC. 41. If the penalty or forfeiture upon which judgment is obtained is not paid or replevied, and there are no goods or chattels out of which to make the same, the defendant may be committed to the jail or workhouse for any period not exceeding thirty days.

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OF THE ASSESSMENT AND COLLECTION OF TAXES.

May levy tax.

SEC. 42. The common council shall have power to levy and cause to be assessed and collected in each year an ad valorem tax, of not more than three-fourths of one per cent. on all property subject to State or county taxation within such city; and also a poll tax, not exceeding fifty cents on every male inhabitant, sane, and not a pauper, of the age of twenty-one years and upwards, residing therein; and also a specific tax on omnibuses, hacks, carriages, or other vehicles used and run for passengers, unless the same be licensed; and on each dog owned by a resident of such city of not more than two dollars.

Unknown owners.

SEC. 43. Where the assessor or his assistants cannot ascertain the name of the owner of any lot or parcel of land, or any person claiming the same, it shall be listed to "owner unknown," and the sale of such lot or parcel of land by virtue of any tax assessed thereon, shall be as valid as if assessed to the true name of the owner or claimant thereof.

Equalization of assessments.

SEC. 44. The common council shall, within one month after the assessment roll has been returned, as provided in the section defining the duties of assessor, at a stated meeting thereof, hear and decide all complaints in relation thereto, and shall correct and equalize the same. They shall then fix the amount and rate of tax to be levied on property and polls within such city.

Tax duplicates, and collection of taxes.

SEC. 45. The clerk, under the direction of the common council, shall proceed to make out the tax duplicate for the current year, and, on or before the first Monday in July of such year, shall deliver the same, with a warrant under the corporate seal, signed by the mayor, and attested by such clerk, attached thereto, to the treasurer of such city, directing him, that of the goods and chattels of all and every person named in said duplicate, and of all persons whose names may be added thereto by him, he shall cause to be made by distress and sale, if necessary, the amount of tax charged against each and several of said persons on said duplicate; and make return of his doings in the premises by the first Monday in January next following.

When land may be sold for taxes.

SEC. 46. If no goods or chattels can be found, out of which to make the tax charged against any person on such duplicate, the treasurer shall sell any lot or parcel of land, or so much thereof as may be necessary, listed to such person, to pay the tax with costs thereon, and the treasurer's certificate to the purchaser shall state for what tax or taxes said lot or parcel of land was sold.

Taxes to be a lien on property.

SEC. 47. All taxes upon real estate shall, from the time the tax duplicate is completed, be a lien thereon to the same extent as a judgment of a court of record, and shall have preference to all private charges upon the same; and all taxes on personal property shall have preference over all private demands.

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Treasurer need not demand taxes.

SEC. 48. The treasurer shall not be required in any instance to make a demand of taxes from the person charged therewith, but may, in his discretion, do so; and if any person charged with a poll tax, or tax on personal property, or any tax on real estate, shall fail when called on to pay the same, it shall be lawful for such treasurer to seize the goods and chattels of such defaulter forthwith.

Statement of property under oath.

SEC. 49. The treasurer shall require of each and every person whom the assessor failed to list, a statement of his taxable property, and the value thereof, which shall be given under the same regulations as if furnished the assessor, and for that purpose the treasurer is authorized to administer the necessary oath or affirmation. If such person fail to furnish such statement, the treasurer shall list and value the same as the assessor is required to do in like cases.

When and how taxes collected.

SEC. 50. After the first Monday in November, and before the first Monday in January, annually, the treasurer shall proceed to collect the taxes upon his duplicate, either by seizure and sale of the goods and chattels of the owner thereof, or by sale of so much of the lot or parcel of land on which the taxes are levied as may be necessary to pay the same, and all other taxes assessed on the personal property of the owner thereof, together with the costs accrued or to accrue in advertising, selling and conveying such land.

Sale of lots for taxes.

SEC. 51. In selling lots and parcels of land, the treasurer shall offer the least quantity thereof that any bidder will take and pay the amount of taxes and costs assessed, and he shall make, seal and acknowledge before some competent authority, a certificate of the land thus sold to such person. Before making such sale, the treasurer shall give notice not less than twenty days, in a newspaper published in such city, that on a certain day to be specified, he will offer for sale the lands and lots on which the taxes shall remain unpaid, or so much thereof as may be necessary to pay said taxes and the costs of seizure and sale. If such city is a county seat the sale shall be made at the court-house door, if not it shall be made at the outer door of the city hall, or other place of meeting of the common council.

Return of sale and redemption thereof.

SEC. 52. It shall be the duty of the treasurer, immediately after the sale of any lot or parcel of land, to make return of the same to the clerk of such city, distinctly stating the lot or parcel of land sold, the name of the purchaser, the day of sale, and the amount of taxes and costs for which it was sold, and any owner or claimant thereof, his agent, or attorney may redeem the same upon like terms, and in like manner as the land sold for State and county taxes is redeemed, by payment to the city clerk.

Return and settlement of treasurer.

SEC. 53. Such treasurer shall, by the first Monday of March in each year, make a return of the tax list and warrant to him, with a full account of his doings thereon, and make final settlement with the common council of such city.

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Such return shall state specifically the aggregate amount of money collected and received, and the amount remaining unpaid on said duplicate, with the names of the defaulters, and cause of failure to enforce payment thereof, and shall be verified by the affidavit of such treasurer.

Compensation of treasurer.

SEC. 54. The treasurer shall be entitled to such allowance as may be made him by the common council, and for collections made by distress and sale, and charges for keeping and removing property distrained, he shall be paid the same fees as are paid to county treasurers for like services.

Common council may employ county treasurer to collect taxes.

SEC. 55. If the common council believe that the public interest would be promoted, it is hereby authorized to certify to the proper county, through the city clerk, on or before the first Monday of July, annually, the per centage by them levied on the real and personal property appraised and returned in the general levy: also all special assessments and specific and poll taxes levied by such board.

The said county auditor shall place the same on the duplicate of taxes for said county, entering in separate columns the kind of tax, and the amount thereof, and designating the same as "corporation tax," which shall be collected by the county treasurer, as other taxes are collected for State and county purposes, with like powers and restrictions.

In the sale of real and personal property, he is hereby authorized and required to act according to the provisions of the law in force for the collection of State and county taxes. The same when collected, shall be paid by such treasurer into the city treasury upon the order of the common council. The auditor and treasurer shall be entitled to the same fees as are allowed them by law for similar services.

When may borrow money.

SEC. 56. No incorporated city under this act shall have power to borrow money or incur any debt or liability, unless three-fourths of the legal veters shall petition the common council to contract such debt or loan, and for any debt created thereby, the common council shall add to the tax duplicate of each year successively a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the hundred dollars to create a sinking fund for the liquidation of the principal thereof.

OF STREETS, BRIDGES, AND PUBLIC IMPROVEMENTS.

Laying out and repairing streets, &c.

SEC. 57. The common council shall have exclusive power over the streets, highways, alleys and bridges within such city, and to lay out, survey, open, straighten, widen, or otherwise alter the same, to make repairs thereto, and to construct and establish side-walks, crossings, drains, and sewers. They may cause buildings and structures in the way of any street or other public improvement, to be taken down and appropriated, upon the payment of damages as hereinafter provided.

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Damages arising under preceding section.

SEC. 58. There shall be appointed by the court of common pleas of the county in which such city is situate, once in each year, upon the application of the common council, five commissioners who shall be freeholders of the city, to appraise the damages or benefits accruing to the owner of any land or lot through which any street is proposed to be constructed or altered, or any building thereon appropriated as provided in the preceding section. Such commissioners shall at the time of their appointment, take and subscribe, an oath or affirmation, faithfully to perform the duties of such commissioners, which shall be endorsed upon or attached to their appointment and filed with the clerk of the city.

Twenty-one days' notice shall be given such commissioners by the common council, through the city clerk, of any appraisement they may require to be made; a like notice shall be given by personal service, or by leaving the same with some person of suitable age, at their reputed places of abode to each of the owners or agents thereof, of lots or land upon or through which the public improvement, or street is poposed to be made. If the owners are unknown, or non-residents, publication of the same in one or more newspapers of the city for two weeks shall be deemed equivalent to such notice.

Powers and duties of commissioners to assess damages.

SEC. 59. Such commissioners, or a majority of them, shall, at the place and time indicated in such notice, proceed to an examination of the real estate proposed to be appropriated as aforesaid, and shall estimate,

First. The expense of the improvement contemplated.

Second. What part thereof, if any, ought to be borne by the city.

Third. What real estate, if any, would be benefitted by the improvement, through, or upon which the same is made, specifying the same in parcels, with the names of the owners, if known, and the proportion of benefit each would receive. They shall view the premises and receive any evidence touching the questions before them, and may, for that purpose, administer oaths to witnesses examined in relation thereto. They shall report upon each of the specifications above indicated, and within three days thereafter file the same with the clerk of the city.

Payment of damages.

SEC. 60. When such report is filed as in the preceding section required, the common council, if it accepts the terms of the same, shall direct the treasurer of the city to tender to the owner or owners of such real estate, or representative, the damages awarded by such commissioners, or if not found within the city, or the award is not accepted, then the same shall be kept by the treasurer as a special deposite, subject to the order of such owner or representative.

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To make out assessment list of real estate to be benefitted by improvements, &c.

SEC. 61. If the common council, by a vote of two-thirds of its members, determine to make the appropriation of real estate for such improvements, it shall cause an assessment list to be made by transcribing so much of the reports aforesaid as describes the parcels of real estate to be benefitted by the improvements, with the name of the owner, if known; and the amount of benefit which each would receive thereby, directing such amounts to be assessed upon such parcels of real estate respectively. The assessment list shall resemble in form, as nearly as practicable, the tax list, a copy of which shall be retained by the clerk, and the original delivered to the treasurer.

Two thirds of owners petitioning for improving street, alley, or sidewalk, work to be let.

SEC. 62. When the owners of two-thirds of the whole line of the lots bordering on any street or alley, in any city, or a part of any street or alley not less than one whole square between any two streets crossing the same, and measuring only the front line of such lots as belong to owners resident in such city, shall petition the mayor and council to have the side-walks graded and paved, or the whole width of the street graded or graded and paved, or for either kind of improvement, or altogether, as herein specified, the mayor and council shall cause the same to be done by contract, given to the best bidder after advertising to receive proposals therefor.

Contracts therefor.

SEC. 63. In all contracts specified in the last preceding section, the cost thereof shall be estimated according to the whole length of the street or alley, or the part thereof to be improved per running foot, and the city shall be liable to the contractor for so much thereof only as is occupied by streets or alleys crossing the same, or by public grounds of the city bordering thereon, and the owners of the lots bordering on such street or alley or the part thereof to be improved, shall be liable to the contractor for their proportion of the cost, in proportion to the length of the line of the lots bordering thereon, and owned by them.

Estimates of work.

SEC. 64. When any such contracts shall be made, and shall be in progress of fulfilment, the mayor and council shall have power to cause estimates to be made from time to time of the amount of work done by the contractor, and to require such amount to be paid to him, deducting a reasonable per centage to secure the completion of the contract, until the whole shall be finished, by the owners of the lots bordering on the street or alley, or the part thereof to be improved in the proportion specified in the next preceding section.

If owners refuse to pay, amount to be collected by suit.

SEC. 65. In case any of the owners of lots shall fail or refuse to pay the amount due by them to such contractors upon any such estimate, as provided for in the next preceding section, said mayor and council shall, at the request of the contractor, proceed to collect the amount so assessed by an action in the name of the corporation against the owner,

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and to pay the same over to the contractor, and such estimate shall be a lien upon the property assessed until the same is paid.

Appeal.

SEC. 66. The common council may appeal from the decision of the commissioner as set forth in their report, within twenty days from the filing of the same, and any owner of land, or representative thereof, aggrieved by such report, may, in like manner, appeal within the time specified, to the circuit or common pleas court having jurisdiction, upon filing the usual bond with the city clerk for costs.

In case owner is an infant, or of unsound mind.

SEC. 67. When the owner of any such land, or buildings appropriated as aforesaid, shall be an infant or of unsound mind, no proceedings shall be had affecting the rights of such persons until a guardian therefor be appointed by the court of common pleas, and such guardian shall have given security to the satisfaction of such court, for the performance of the trust.

OF THE PREVENTION AND EXTINGUISHMENT OF FIRES.

Councilmen to be fire-wardens.

SEC. 68. The councilmen, by virtue of their office, shall be fire wardens, and as such shall have power, at all reasonable hours, to enter into and examine all dwelling houses, out-houses, lots and yards in their respective wards; to inspect all places therein where fire is used, and ascertain how ashes are kept and disposed of; such examination shall be had at least once in three months.

May regulate construction of chimneys, stoves, boilers, &c.

SEC. 69. The common council shall have power to regulate the construction of chimneys, hearths, ovens, the erection of stoves and stove pipes, boilers and apparatus used in manufactories, and in building, and cause the same to be removed or made secure when considered dangerous; to compel the owners or occupants of houses and other buildings to make scuttles in the roof thereof and stairs or ladders leading to the same.

May procure fire engines, &c.

SEC. 70. The common council may procure fire engines, and all other necessary apparatus for the extinguishment of fires, and have the charge and control of the same; and shall provide engine and other houses for their preservation and security; shall organize from reputable citizens, fire, hook and ladder companies, and companies auxiliary thereto, and make rules for their government and regulation, with such penalties for neglect and misconduct as shall be proper. They may remove members of such companies, and appoint others in their stead.

Chief engineer.

SEC. 71. The chief engineer shall have the superintendence of the fire department. He shall see that the apparatus for extinguishing fires belonging to the city, is kept in proper order, and from time to time report to the common council the condition of the same; and the repairs, or additions thereto to render the department efficient. He shall

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appoint a first and second assistant engineers, who shall act under his directions.

Engineer, assistants, &c., to have their names registered.

SEC. 72. The engineer and assistants of the fire department, fire warden, firemen, and members of all other auxiliary companies to the fire department, established by the common council, shall have their names registered with the clerk of the city; and his certificate of such registry shall exempt such persons, for the current year, from serving on juries in all courts, and in the militia, except in cases of war, invasion or insurrection.

In case of fire, building may be blown up, and amount of damages therefor.

SEC. 73. When any building in the city is on fire, or any building adjacent thereto is likely to take and convey fire to other buildings, to the great destruction of property, it shall be lawful for the chief engineer, or engineer acting as such, with the concurrence of the mayor, or any five councilmen, to take down, blow up or destroy the same; and no action shall be maintained against any person therefor, but the person owning or having interest in such building, may, within three months thereafter, apply in writing, to the common council, to assess the damages sustained thereby; and the common council shall appoint three reputable freeholders to determine the amount of damages done to the property of the complainant, by the destruction of such building; such assessment shall be made under oath and subscribed by the persons making the same, and filed with the clerk of the city within ten days from the date of their appointment. But the complainant or corporation may, within twenty days thereafter, appeal from such assessment to the common pleas or circuit court of the proper county. The damages awarded by the common council, or by judgment of such court, shall be added to the next annual levy and collected with the general tax, and paid over to such claimant.

GENERAL PROVISIONS.

By-laws to be recorded and signed.

SEC. 74. All by-laws and ordinances shall, within a reasonable time after their passage, be recorded in a book kept for that purpose, and shall be signed by the presiding officer of the council and attested by the clerk. On the passage or adoption of any by-law, ordinance or resolution, the yeas and nays shall be taken and entered of record.

Pay of city officers.

SEC. 75. The common council shall, in their by-laws, provide for the compensation and pay of all the officers of such city, where any is given. If there be a salary attached to any such office, the same shall be payable quarterly, and shall not be diminished during the term of the then incumbent.

New wards, how created.

SEC. 76. Whenever a petition signed by thirty or more freeholders, is presented to the common council, praying for the creation of a new and additional ward, and such petitioners are residents and have freeholds within the limits of

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the proposed ward, and have attached thereto a roll containing an enumeration of the inhabitants thereof verified by affidavit, such council, if they find the proposed ward has the requisite population, and that the petition is genuine, shall submit the question to the voters of the city at the next annual election, by publishing the proposition in the general notice of election; and such question shall be decided by ballot "yes," or "no," as is provided in section six of this act in relation to the incorporation of cities.

Cities now incorporated may organize under this act.

SEC. 77. Any city heretofore incorporated under a law of this State, may, by a resolution of the common council, adopted by a majority vote thereof, and entered upon their record book, become a municipal corporation under this act, but the same shall be deemed a surrender of the charter of such city, with all the rights and franchises therein contained; and no such city shall be entitled to any provision in this act without adopting the whole act.

No right, prosecution or suit to be affected by such surrender.

SEC. 78. No rights acquired or liabilities incurred in favor of, or agninst any city, and no suit or prosecution of any kind pending, shall be affected by the surrender of the charter thereof as provided in the preceding section, but the same shall remain and progress as if no change had been made.

Sinking fund.

SEC. 79. For the purpose of creating a sinking fund, for the gradual extinguishment of the bonds and funded debt of any city coming under this act of incorporation, the council thereof shall annually levy and collect, in addition to other taxes herein provided, not less than one-half mill on the dollar, upon the taxable property in such city, which shall be paid into the treasury, and applied by the direction of the common council, to the extinguishment of the bonds and debt aforesaid, and to no other purpose whatever. There shall also be levied and collected annually, an additional tax sufficient to pay the whole interest of the public debt due from such city.

Loans, how and when made.

SEC. 80. Loans may be made by a vote of two-thirds of the common council, in anticipation of the revenue of the current and following year, and payable within that period; but the aggregate amount of such loan in any one fiscal year shall not exceed the levy and tax authorized by this act, for the municipal expenses for the same year.

City limits may be extended.

SEC. 81. Whenever there shall be lots laid off and platted, adjoining such city, and a record of the same is made in the recorder's office in the proper county, the common council may, by a resolution of the board, extend the boundary of such city so as to include such lots; and the lots thus annexed shall thereafter form a part of such city, and be within the jurisdiction of the same. The common council shall immediately thereafter file a copy of such resolution, together with plat and map of survey, defining the metes and boundaries of such addition, in the office of the recorder aforesaid, which plat shall be recorded.

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Contiguous territory may be annexed.

SEC. 82. When any city shall desire to annex contiguous territory thereto, not platted or laid off, the common council shall present to the board of county commissioners a petition, setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit.

Such council shall give thirty days' notice, by publication, in one or more newspapers of the city, of the intended petition, stating in such notice the territory sought to be annexed.

Proceedings of commissioners upon such petition.

SEC. 83. The board of county commissioners, upon the reception of such petition, shall consider the same, and shall hear the testimony offered for or against such annexation, and if, after inspection of the map, and of all proceedings had in the case, such board is of the opinion that the prayer of the petition should be granted, it shall cause an entry to be made in the order book, specifying the territory annexed, with the boundaries of the same according to the survey, and they shall cause an attested copy of such entry to be filed with the clerk of the circuit court of such county, which shall be conclusive evidence in all courts of such annexation, and the common council shall cause a plat of the annexed territory to be recorded.

Officers of cities complying with this act.

SEC. 84. Officers of any city coming under this act shall remain and continue in their respective offices, subject to the provisions herein contained, until the annual election next following, and [until] their successors are chosen and qualified.

All by-laws, ordinances, and regulations not inconsistent with this act, shall remain and be continued in force until altered or repealed by the common council of such city.

Member of city council may be expelled.

SEC. 85. Any member of the city council may be expelled or removed from office by a two-thirds vote of the whole number elected, but not a second time for the same cause. Any officer of such municipal corporation, whether elected or appointed, may be removed by a like vote. The common council shall make provision in their by-laws, as to the mode in which charges shall be preferred, and a hearing of the same had.

Suits instituted by city.

SEC. 86. Whenever any suit shall be instituted by such city, it shall not be necessary to aver its corporate organization, or the publication of its by-laws or ordinances, unless the same is controverted by affidavit.

Board of trustees may perform duties of councilmen.

SEC. 87. In those incorporated towns which have a common council instead of a board of trustees in their organization, the duties by this act required to be performed by the board of trustees shall be performed by the common council.

Emergency.

SEC. 88. In consequence of an emergency which is hereby declared to exist, this act shall take effect and be in force from and after its passage.

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CHAPTER 18.

AN ACT providing for the colonization of Negroes and Mulattoes and their descendants, and appropriating 5000 dollars therefor, constituting a State Board of Colonization, declaring the duties of said Board, and of State Treasurer and County Treasurer in relation thereto.

[APPROVED APRIL 28, 1852.]

What to constitute colonization fund.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That for the purpose of colonizing negroes mulattoes and their descendants that were residents of this State on the first day of November, one thousand eight hundred and fifty-one, and shall continue to reside in this State, that the sum of five thousand dollars is appropriated out of the State Treasury for the year one thousand eight hundred and fifty-two, [which] together with all fines collected for the violation of laws passed to carry out the provisions of article thirteen of the constitution of this State, and the voluntary contributions received for said purposes, shall constitute a State colonization fund, and be applied to the colonization in Africa of said negroes, mulattoes, and their descendants.

Lands to be purchased in Africa, to be styled "the Indiana Colony." Each colored emigrant entitled to 100 acres.

SEC. 2. Three thousand dollars of the money appropriated out of the State Treasury shall be used for the purchase of land in Africa, to be styled the Indiana colony, which shall be appropriated in one hundred acre lots, to such negroes, mulattoes, and their descendants, as designated in the first section of this act, as shall emigrate from this State to Africa, and occupy such land or control the same by resident acts of ownership, and the first emigrants shall have first choice in location of certificates within said purchase, and the State Board of colonization, shall determine from what points the measurement of said lands shall commence, and issue to emigrants such certificates for location as shall secure to them their just rights, and that all colored persons that have heretofore been sent to Liberia from this State by any colonization society, shall each be entitled to a certificate entitling them to one hundred acres of land within the territory so purchased.

Fifty dollars to be given each negro, &c., emigrating.

SEC. 3. The State Board of Colonization are authorized to give to each negro or mulatto that shall be entitled to the benefits of this act, who shall emigrate to Africa, when they shall need aid, for said purpose, the sum of fifty dollars out of the State colonization fund, and said board shall determine the right of applicants, giving the preference to whole families when they shall desire it.

County Treasurers to receive donations and take charge of bequests, &c.

SEC. 4. The county treasurers of the several counties of this State shall receive all donations in money to aid colonization that may be offered, and take charge of all bequests by will or otherwise, of real estate, or any assets whatever,

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and in cases of such bequests other than money, the board of county commissioners are hereby made a board of council in reference to such bequests, and shall instruct the said treasurer to take such steps as in their judgment will make the assets bring the most in money, and as converted to pay over to the State Treasurer as heretofore provided, at the time required by law they shall pay in the State revenue.

Governor, Auditor and Secretary of State to constitute State Board.

SEC. 5. The Governor, Auditor and Secretary of State, shall, ex officio, constitute the State Board of Colonization, and as such have full powers, by correspondence with the officers of the republic of Liberia, or other persons, to carry out the provisions contemplated by the second section of this act, in acquiring title to land in Africa, and to do all other things contemplated they should, to carry out the provisions of this act, and shall report their proceedings to each General Assembly of the State.

Treas. of State to receive and pay out funds

SEC. 6. It shall be the duty of the Treasurer of State to receive from the county treasurers all colonization funds paid to him by them, and to pay out all such funds upon the order of the State Board of Colonization.

CHAPTER 19.

AN ACT in relation to commissions, certificates and resignations of officers.

[APPROVED MAY 28, 1852.]

What officers to be commissioned by the Governor.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, All officers, except members of the General Assembly, specially designated in the constitution, or who are elected by the General Assembly, or appointed by the Governor, and all judges, shall be commissioned by the Governor.

What officers to receive certificates.

SEC. 2. All county officers elected by the people who are not commissioned, also constables, shall receive certificates of their election from the clerk of the circuit court of the proper county.

Township officers.

SEC. 3. Township officers, except constables, shall receive certificates of their election from the board of judges of the townships respectively for which they shall be elected.

Auditor to certify appointments of county board.

SEC. 4. Appointments made by the board of county commissioners shall be certified by the auditor, under the seal of such board.

Resignations, to whom sent.

SEC. 5. The resignation of officers shall be transmitted as follows:

1. Governor and Lieutenant Governor to the legislature, if in session; if not, then to the Secretary of State.

2. Members of the general assembly, and all officers com-

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missioned by the Governor, except justices of the peace, to the Governor.

3. Justices of the peace, and all officers who receive a certificate of their election from the clerk of the circuit court, to such clerk.

4. All who receive their certificates of election or appointment from the auditor, or board of judges, to such auditor.

5. Other officers, not provided for in this act, shall deliver their resignations to the officer, board or court from whom they received their appointment.

Vacancies, how filled.

SEC. 6. All vacancies occasioned, except by resignation, in which it is the duty of the Governor to issue a writ of election, or to make an appointment to fill such vacancy, shall be certified to him by the clerk of the circuit court of the county in which such officer was elected; if elected by more than one county, then by the clerk of the county where such officer resided.

Vacancy in Gen. Assembly, Gov. to be notified.

SEC. 7. When a vacancy happens, except by resignation, in the office of a member of the general assembly, while in session, the presiding officer of the proper house shall notify the Governor thereof.

County officer resigning to give notice.

SEC. 8. Whenever any county officer shall resign, he shall give notice thereof to the court or board having the power to appoint a successor.

CHAPTER 20.

AN ACT providing for the organization of County Boards, and prescribing some of their powers and duties.

[APPROVED JUNE 17, 1852.]

Board to be organized in each county.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be organized in each county in this State, a board of commissioners for transacting county business, to consist of three qualified electors, any two of whom shall be competent to do business, to be elected by the qualified electors of the several counties respectively, at the general elections on the second Tuesday in October; and

Vacancy, how filled.

whenever a vacancy occurs in the office of such commissioner before the expiration of the term, the remaining commissioner or commissioners, together with the auditor, shall choose some person to fill such vacancy until the next annual election thereafter: *Provided*, The commissioners now in office shall serve out their terms of office respectively, and until their successors are elected and qualified.

Proviso.

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County to be districted.

SEC. 2. Each county shall be divided into three districts, and numbered one, two, and three, not subject to alteration oftener than every three years; but the districts now formed shall so remain until altered pursuant to the provisions herein contained; but such counties as are not divided into such districts, shall be so laid off by the board of commissioners at their first session after the publication of this act; and one commissioner shall be elected from the residents of each of such districts, by the voters of the whole county; and in any county where there are no commissioners, the auditor thereof shall divide the same into such districts.

Board, how organized.

SEC. 3. At the first election held to choose the first board of commissioners of any county, the person having the highest number of votes shall continue in office three years; the next highest, two years; and the next highest thereafter, one year; but if two or more persons have the same number of votes, their terms shall be determined by lot, under the direction of the board of canvassers returning the election; and annually thereafter, one commissioner shall be elected, and shall continue in office three years, and until his successor is elected and qualified.

Oath of office.

SEC. 4. Each person elected as such commissioner shall, on receiving a certificate of his election, take the usual oath of office, which being certified on the back of such certificate under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to act as such.

Corporate powers.

SEC. 5. Such commissioners shall be considered a body corporate and politic by the name and style of "the Board of Commissioners of the county of ———," and as such, and in such name, may prosecute and defend suits, and have all other duties, rights and powers incident to corporations, not inconsistent with the provisions of this act.

Times and length of sessions.

SEC. 6. Such commissioners shall meet at the court house in each county, on the first Mondays in March, June, September and December, in each year, and in counties whose population is under ten thousand, such commissioners may sit six days at such term, but if the population exceed ten thousand, they may sit nine days, if the business of the term require it, the enumeration to be fixed by the last census of the United States, or by the latest enumeration by the State; but if the circuit court shall meet on any of the before-mentioned days, the commissioners shall meet on the Monday succeeding the term of such court.

Auditor to act as clerk; sheriff to execute orders.

SEC. 7. The auditor of the county shall attend the meetings of such commissioners, and keep a record of their proceedings, and the sheriff of the county shall also, by himself or deputy, attend and execute their orders.

Board divided on question, same shall be continued.

SEC. 8. When two only of the members shall attend the meeting of the board, and a division shall take place on any

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question, it shall be continued until the next meeting before it shall be finally determined.

Rules for conducting business.

SEC. 9. Such commissioners shall adopt regulations for the transaction of business, and in the trial of causes they shall comply, so far as practicable, with the rules [of] conducting business in the circuit court.

Shall use a seal. Copies of proceedings, signed and sealed, to be evidence.

SEC. 10. The commissioners of each county shall use a common seal; and copies of their proceedings, when signed and sealed by the said auditor, shall be sufficient evidence thereof, on the trial of any cause in any of the courts of this State.

May administer oaths, preserve order, punish contempts, enforce orders, &c.

SEC. 11. Such commissioners, or the auditor, may administer all oaths necessary to carry into effect the provisions of this act; and they shall have power to preserve order, when sitting as such, to punish contempts by fine not exceeding three dollars, or imprisonment not exceeding twenty-four hours; may enforce obedience to all orders made by them by attachment or other compulsory process; and when fines are assessed by them, execution shall issue therefor, and be collected and paid over as other fines.

Justices doing business, to continue till election of board; proceedings to progress under new board; contracts, &c., to continue in force.

SEC. 12. In any county where the county business is done by the justices of the peace, they shall continue to act, until the county commissioners shall be chosen and qualified, and proceedings pending before such board of justices, or before any court in which they are parties, or which has been appealed from their decision, shall proceed to final determination under the authority of such commissioners, if the same be necessary, in their name, and all contracts made by or with such board of justices, or liabilities suffered by, for, or against them in their corporate capacity, shall be of the like effect as for or against such commissioners in their corporate capacity, and for and against such county as if such contracts had been entered into with and by such commissioners.

Powers and duties:

SEC. 13. Such commissioners in their respective counties shall have power at their meetings:

To dispose of county property.

1. To make orders respecting the property of the county in conformity to law, to sell the public grounds of the county upon which the public buildings are situate, and to purchase in lieu thereof, in the name of the county, other grounds in the county seat on which such buildings shall be erected; to purchase other lands for the enlargement of the public square, and to take care of and preserve such property. *

* In an action against a county board for work and labor, &c., the declaration must show some act creating their liability to have been done by them at a regular session fixed by law. *Archer* vs. *Board of Com.*, 3 Blackf. 501.

The board is a court of record, and its acts can only be proved by the record. *State* vs. *Conner*, 5 Blackf. 325.

An agreement made by county commissioners not at a regular session, but in vacation, is not binding on the county. *Campbell* vs. *Brackenridge*, 8 Blackf. 471.

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2. To allow all accounts chargeable against such county, not otherwise provided for, and to direct the raising of such sums as may be necessary to defray all county expenses. To allow accounts and provide for expenses.

3. To audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county, or appropriated for its benefit, and, To audit accounts of officers.

4. To perform all other duties which may be enjoined on them by any law of this State. To perform other duties imposed by law.

SEC. 14. Such commissioners shall cause to be recorded, in a book to be kept for that purpose, their proceedings and their determinations touching all matters properly cognizable before them; and all the books, accounts, vouchers, papers, and documents, touching the business or property of the county, shall be carefully kept by the auditor, and open to the inspection of any person. Record to be made of all proceedings, books, &c., to be kept by auditor, open to inspection.

SEC. 15. Such commissioners shall sit with open doors; and where there shall be no court-house, or it shall be unfit or inconvenient, they may hold their meetings in the office of auditor, or in such other building as they may think proper. Shall sit with open doors, &c.

SEC. 16. Such commissioners shall cause a court house, jail, and public offices for the clerk, recorder, treasurer, and auditor, to be erected and furnished, where the same has not been done, and shall keep all the public buildings of the county in repair, and such offices, if practicable, shall be made fire proof, and shall be occupied by such officers respectively. Shall have the direction of county buildings.

SEC. 17. Whenever it shall be necessary to construct, complete or repair the court house, jail, or other county building, or whenever it may be desirable to fund or average any existing debt incurred for county purposes and the revenues afforded by reasonable taxation are insufficient to do the same, the county commisioners may borrow for that purpose any sum of money not exceeding ten thousand dollars, and issue bonds therefor, in amounts of not less than twenty five dollars each, and bearing a rate of interest not exceeding the legal rate in the State or Territory where the same are negotiated. May borrow money for construction, &c., of buildings, and issue bonds therefor.

SEC. 18. Such bonds may be sold at any place within the United States, but at no greater discount than eight per cent. and shall be in form substantially as follows: Bonds, where saleable—at what discount.

State of Indiana, county of ———: The county of ——— will pay to the bearer —— years from the date hereof, the sum of ——— dollars and —— cents with interest thereon at the rate of —— per cent., payable annually at ——— in the State of ——— on the —— day of ——— in each year. Form.

———————, *Commissioners of county.*

And there shall be attached to each of such bonds the certificate of the auditor of the proper county, in form, as follows: Certificate of auditor.

I ————, county auditor, do certify that the annexed bond was issued to the county treasurer this —— day of

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——— A. D. In testimony whereof I have hereunto set my hand and fixed the seal of said board of county commissioners this —— day of ——— 18—

[SEAL.] ————————, *county auditor.*

Auditor to deliver bonds to treasurer and charge him therewith; bonds to be deemed funds; treasurer liable.

SEC. 19. The county auditor shall deliver such bonds to the treasurer of such county, and charge him therewith upon the proper books in his office, and the same shall be deemed as a part of the funds of the county in the hands of the treasurer thereof, who shall be liable therefor upon his official bond as in the case of other funds or securities belonging to the county.

Bonds assignable.

SEC. 20. Such bonds shall be assignable by endorsement thereon, and such endorsement shall vest the property thereof absolutely in each and every indorsee successively.

Board shall levy tax for redemption of bonds.

SEC. 21. Whenever the bonds are sold or negotiated as herein provided, the county commissioners shall make a levy of not less than one-fourth of one per cent. on the taxable property of such county, and cause the same to be placed upon the tax duplicate, properly designated in a separate column for the current and each succeeding year; and such tax when collected shall be invested in the bonds aforesaid or other State and county securities, and thereupon shall constitute a sinking fund for the extinction and ultimate liquidation of the debt created by the issue of such bonds.

Shall levy tax for payment of interest.

SEC. 22. The board of commissioners shall provide by taxation for the annual payment of the interest accruing on all bonds sold, and for that purpose shall make a distinct and specific levy, and cause the same to be placed in a separate column upon the tax duplicate, and such levy, when collected, shall be applied to the payment of the interest as aforesaid, and the balance, if any, to the payment of the principal of such debt, and for no other purpose whatever.

Treasurer to return unsold bonds to auditor, to be laid before board, to be destroyed, &c.

SEC. 23. If such bonds, or any portion of them, shall not be sold as aforesaid, the county treasurer shall return them to the county auditor, who shall give him the proper credit therefor upon his books, and at the next session of the board shall lay such bonds before them. Such board shall cancel or otherwise destroy the same in the presence of such auditor and treasurer, and shall cause an entry of the fact to be made in the order book.

No allowance to be made unless detailed statement be filed and proved, &c.

SEC. 24. No allowance shall be made by such commissioners, unless such person [the claimant] shall file with such commissioners a detailed statement of the items, and dates of charge, nor until such competent proof thereof is adduced in favor of such claim, as is required in other courts; but if the truth of such charge is known to such commissioners, it may be allowed without other proof, upon that fact being entered of record in the proceedings about the claim.

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Allowance to county officers for extra services. Not to be made till they make sworn statement.

SEC. 25. Such commissioners shall annually allow the clerk of the circuit court, sheriff and auditor, an annual compensation for all extra services, as such, not exceeding one hundred dollars each; but such allowance shall not be made to any such officer, until he shall file a detailed statement of his charge, with items and dates, to the truth of which he shall take and subscribe an oath; which allowance shall be in discharge of all compensation for all extra and other services where no certain fee is fixed by law.

Suits for recovery of lots sold off of grant for county seat, and to be in name of proper board.

SEC. 26. In all cases, where lands have been granted to any county for the purpose of a county seat, and town lots have been sold thereof, and the purchase money or any instalment thereof still remains unpaid, all proceedings necessary to be had to recover possession of any such town lot, or to enforce the payment of the purchase money, shall be instituted in the corporate name of the commissioners of the proper county.

Commissioners' claim for money advanced for locating seat of justice to be first paid.

SEC. 27. When any claim exists for money advanced by any county officer, for the use or benefit of the county, pursuant to the provisions of law, or of any order of said board, or when there shall be any claim due to any commissioner for locating the seat of justice of the county, such claim shall have preference, and [be] paid by the treasurer out of any money in his hands at the time, or any money which may first come into his hands after the presentment of the order therefor.

County property liable for judgment against board, but court may give time for payment out of revenue to be assessed.

SEC. 28. When any judgment has been obtained against commissioners in their corporate capacity, the public property of the county shall be liable therefor; but the court rendering such judgment may, before the issuing of execution, allow such board reasonable time, if the same is necessary, to assess and collect a sufficient amount of revenue to pay and discharge such judgment, in addition to the ordinary expenses of the county.*

To make and publish statement of receipts and expenditures.

SEC. 29. The board of county commissioners at their session in June, in every year, shall make a fair and accurate statement of the receipts and expenditures of the preceding year, and shall cause the same to be posted up at the court-house-door, and at two other places in their county, and published in some newspaper of such county, if there be any.

May exempt indigent person from poll tax.

SEC. 30. Such commissioners may exempt from paying poll tax, any person who from any cause they may deem unable to pay it.

Appeals to be allowed.

SEC. 31. From all decisions of such commissioners there shall be allowed an appeal to the circuit or common pleas court, by any person aggrieved; but if such person shall not be a party to the proceeding such appeal shall not be allowed, unless he shall file in the office of the county auditor his affidavit setting forth that he has an interest in the matter

Person not party to proceeding must file affidavit, &c.

* A judgment by default against a county should show that the amount was only to be collected from the property of the county. *Sybert* vs. *Ellis*, 3 Blackf. 229.

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decided, and that he is aggrieved by such decision, alleging explicitly the nature of his interest.*

Appeal to be taken within 30 days; bond to be filed.

SEC. 32. Such appeal shall be taken within thirty days after the time such decision was made, by the appellant filing with the county auditor a bond with sufficient penalty and sureties, to be approved by said auditor, with condition for the due prosecution of uuch appeal, and the payment of all costs, if the same shall be adjudged against said appellant.

Auditor to deliver transcript, &c., within twenty days.

SEC. 33. Within twenty days after the filing of such appeal bond, the auditor shall make out a complete transcript of the proceedings of said board, relating to the proceeding appealed from, and shall deliver the same, and all the papers and documents filed in such proceeding, and the appeal bond, to the clerk of the court to which the appeal is taken.

Summons, when to issue against appellee; how served.

SEC. 34. When such appeal is taken by a person not a party to the proceeding, or when such appeal is taken in vacation, the appellant, if there be an appellee, shall cause a summons to be sued out of the clerk's office of the court to which the appeal is taken, returnable on the first day of any term of such court next after the date thereof, requiring the appellee to appear and answer said appeal, which summons shall be issued and served as other similar process.

Appeal, when to stand for trial.

SEC. 35. If such appeal shall be filed, and such summons, when necessary, served ten days before the first day of the court next after such appeal, such cause shall stand for trial at such term; otherwise it shall be continued until the next term of the court.

Appeal to be tried as an original cause.

SEC. 36. All appeals thus taken to the circuit or common pleas court shall be docketed among the other causes pending therein, and the same shall be heard, tried and determined as an original cause.

Court may make final decision, or return proceeding to board.

SEC. 37. Such court may make a final determination of the proceeding thus appealed, and cause the same to be executed, or may send the same down to such board, with an order how to proceed, and may require such board to comply with the final determination made by such court in the premises.

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* An appeal from the judgment of a Board of Commissioners must be retried on its merits. The Supreme Court will presume it has been so tried, unless the *record* show the contrary, if the Circuit Court has given final judgment.—*Hedley* vs. *Board of Com.*, 4 Blackf., 116.

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CHAPTER 21.

AN ACT authorizing the appointment and prescribing the powers of Commissioners in other States to take acknowledgments of deeds and other instruments, and depositions.

[APPROVED MAY 31, 1852.]

Governor may appoint commissioners in other States and countries; term of office.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Governor may appoint and commission in any other State or territory, or in any foreign country, such number of commissioners as he may think proper, who shall hold their office for the term of four years unless such appointment be sooner revoked by the Governor, who shall have power to revoke the same.

Those now in office to continue till 1st Nov., 1855.

SEC. 2. All commissioners acting under existing appointments, shall hold such office until the first day of November, 1855, unless sooner revoked by the Governor.

May take depositions, affidavits, and acknowledge deeds, &c., and attest with seal.

SEC. 3. Commissioners so appointed shall have power to take depositions and affidavits to be used in the courts of this State, and acknowledgment of deeds and other instruments, proper to be recorded in this State. But such depositions or acknowledgments shall not be valid unless attested by the official seal of such commissioner. But when so attested they shall have the same force and effect as if taken before a notary public in this State.

Shall take oath and forward to the Governor, and procure a seal.

SEC. 4. Before any commissioner shall enter upon the discharge of his duties as such, he shall take and subscribe an oath, before some officer authorized to administer oaths, that he will faithfully discharge his duties as such commissioner; which oath he shall forward to the governor, to be by him filed in the office of Secretary of State. And he shall also procure such an official seal as will make a plain and distinct impression on paper.

Copy of act to be forwarded.

SEC. 5. It shall be the duty of the Secretary of State to forward a copy of this act to all commissioners now acting, or hereafter appointed.

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CHAPTER 22.

AN ACT giving validity to a certain class of contracts.

[APPROVED MAY 31, 1852.]

Contracts for improvements on U. S. lands valid.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That no contract for a valid consideration to sell any interest, real or supposed, in any land belonging to the United States, or for the occupancy thereof, or any improvement made thereon, shall, for that cause, be avoided or impeached, at the instance of either party, his heirs, executors, administrators or assigns. *Provided*, That the nature and extent of such interest were, at the time of contract, known to such party, and his consent thereto obtained, without fraud, covin or misrepresentation.

Proviso.

CHAPTER 23.

AN ACT concerning real property and the alienation thereof.

[APPROVED MAY 6, 1852.]

Who incapable of holding and conveying real estate.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That no person except a citizen of the United States or an alien, who shall be, at the time, a *bona fide* resident of the United States shall take, hold, convey, devise, or pass by descent, lands, except in such cases of descent or devise as are provided for by law.

Infants and insane persons.

SEC. 2. Persons of unsound mind and infants may not alien lands nor any interest therein.*

*The doctrine that a grantor or obligor shall not be permitted to stultify himself in order to avoid his bond or conveyance, is not recognized in modern times. But that doctrine, were it recognized, would not prevent the heirs of an obligor or grantor from showing his incapacity to contract. — *Harbison* vs. *Lemon, et. al.*, 3 Blackf. 51.

A conveyance may be avoided either at law or in equity, if, at the time of its execution he was so destitute of understanding as not to know what he was doing, whether the incapacity were occasioned by idiocy, lunacy, or drunkenness.—*Ibid.*

But the mere circumstance that in the opinion of the witness, the grantor was too much intoxicated when he executed the deed to transact business safely, is not sufficient of itself to avoid the deed —*Ibid.*

A. executed a conveyance of real estate to his son B.; the grantor, who was old and in his dotage, supposing he was executing a title-bond for the land. A.'s intention was to secure, by such bond, the land against certain damages which he erroneously supposed C. would claim of him. This conveyance, instead of a title-bond, was procured by deceit on the part of the grantee, who caused the deed to be recorded immediately after its execution. On a bill against the grantee, filed by the other heirs of the grantor, the conveyance was set aside.—*Fenton* vs. *Fenton, et. al.*, 8 Blackf. 446.

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The title of resident aliens here Nov. 1, 1851, not to be affected.

SEC. 3. No title of any resident inhabitant of this State, who was in actual possession of any lands on the first day of November one thousand eight hundred and fifty-one, or at any time previous, nor of any person holding under such resident, shall be defeated or prejudiced on account of his own alienism or the alienism of any other person through whom his title may have been derived.

Conveyances, how made.

SEC. 4. Conveyances of lands, or of any interest therein, shall be, by deed in writing, subscribed, sealed and duly acknowledged by the grantor, or by his attorney; except *bona fide* leases for a term not exceeding three years.

Conveyances by attorney.

SEC. 5. No conveyance of lands by attorney shall be good, unless said attorney shall have been empowered by an instrument in writing, subscribed, sealed and acknowledged by his principal, in like manner as said conveyance is required to be.

Deed of husband and wife.

SEC. 6. The joint deed of the husband and wife, shall be sufficient to convey and pass the lands of the wife, but not to bind her to any covenant therein.

Certain estates construed to be in common.

SEC. 7. All conveyances and devises of lands, or of any interest therein, made to two or more persons, except as provided in the next following section, shall be construed to create estates in common and not in joint tenancy; unless it shall be expressed therein that the grantees or devisees shall hold the same in joint tenancy and to the survivor of them, or it shall manifestly appear, from the tenor of the instrument, that it was intended to create an estate in joint tenancy.

Exceptions.

SEC. 8. The preceding section shall not apply to mortgages, nor to conveyances in trust, nor when made to husband and wife; and every estate vested in executors, or trustees as such, shall be held by them in joint tenancy.

Release and quit-claim.

SEC. 9. A deed of release or quit claim shall pass all the estate which the grantor could convey by a deed of bargain and sale.

Lineal and collateral warranties abolished.

SEC. 10. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement shall be answerable upon such covenant or agreement to the extent of property descended or devised to them, and in the manner prescribed by law.

Conveyances to be by deed and to be recorded.

SEC. 11. No conveyance of any real estate in fee simple, or for life, or of any future estate, and no lease for more than three years from the making thereof, shall be valid and effectual against any person other than the grantor, his heirs and devisees, and persons having notice thereof, unless it is made by a deed recorded within the time and in the manner provided in this act.*

* A *voluntary* conveyance of real estate, though not recorded as prescribed by the statute, is valid against any subsequent *voluntary* conveyance of the property executed by the grantor.—*Way et. al.* vs. *Lyon*, 3 Blackf. 76.

A deed executed since 1807, conveying land in this State, is valid between

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Form of deed in fee simple, with a warranty.

SEC. 12. Any conveyance of lands worded in substance as follows: "A. B. conveys and warrants to C. D." [here describe the premises] "for the sum of" [here insert the consideration,] the said conveyance being dated and duly signed, sealed and acknowledged by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guaranties the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims.*

Form of quit-claim deed.

SEC. 13. Any conveyance of lands, worded in substance as follows: "A. B. quit claims to C. D." [here describe the premises] "for the sum of" [here insert the consideration,] the said conveyance being duly signed, sealed, and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quit claim to the grantee, his heirs and assigns.

The words "heirs, &c." not necessary.

SEC. 14. It shall not be necessary to use the words "heirs and assigns of the grantee," to create in the grantee an estate of inheritance; and if it be the intention of the grantor to convey any lesser estate, it shall be so expressed in the deed.

Form of mortgage.

SEC. 15. Any mortgage of lands worded in substance as follows: "A. B. mortgages and warrants to C. D." [here describe the premises] "to secure the repayment of" [here recite the sum for which the mortgage is granted, or the notes or other evidences of debt, or a description thereof, sought to be secured, also the date of the repayment,] the said mortgage being dated and duly signed, sealed, and acknowledged by the grantor, shall be deemed and held to be a good and sufficient mortgage to the grantee, his heirs, assigns, executors and administrators, with warranty from the gantor and his legal representatives, of perfect title in the grantor, and against all previous incumbrances. And if in the above form the words *and warrant* be omitted, the mortgage shall be good, but with out warranty.

Conveyances to be recorded within 90 days.

SEC. 16. Every conveyance or mortgage of lands, or of any interest therein, and every lease for more than three years, shall be recorded in the recorder's office of the county

the parties, though it be unacknowledged and without a subscribing witness.—*Stevenson* vs. *Cloud*, 5 Blackf. 92.

A Sheriff's deed is good against the execution defendant and his heirs and devisees, though it be not acknowledged or recorded.—*Dixon* vs. *Doe d. Lasselle*, 5 Blackf. 106.

A voluntary conveyance is valid against a subsequent purchaser for valuable consideration, *with notice;* and the record of such conveyance is sufficient notice.—*McNeely et. al.* vs. *Rucker*, 6 Blackf. 391.

Same point decided in *Givan* vs. *Doe d. Tout*, 7 Blackf. 210.

A voluntary conveyance cannot be impeached by subsequent declarations of the grantor. Such conveyance, if made *bona fide*, is valid against a subsequent purchaser, *with notice.*—*Paine et. al.* vs. *Doe d. Griffin*, 7 Blackf. 485.

* A person holding land under a general warranty deed made to him by another, has, *prima facie*, a good title.—*Sheets et. al.* vs. *Dufour*, 5 Blackf. 549.

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where such lands shall be situated; and every such conveyance or lease not so recorded within ninety days from the execution thereof, shall be fraudulent and void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration.

Deeds of defeasance.

SEC. 17. When a deed purports to contain an absolute conveyance of any estate in lands, but is made, or intended to be made, defeasible by force of a deed of defeasance, bond, or other instrument for that purpose, the original conveyance shall not thereby be defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded, according to law, within ninety days after the date of said deed.

Deeds must be acknowledged.

SEC. 18. To entitle any conveyance, mortgage, or instrument of writing to be recorded, it shall be acknowledged by the grantor, or proved before any judge, or clerk of a court of record, justice of the peace, recorder, [redacted] or mayor of a city in this or any other State; or before any commissioner appointed in another State by the Governor of this State; or before any minister, charge d' affaires or consul of the United States in any foreign country.*

When acknowledgment is taken in another county, to be certified.

SEC. 19. When any conveyance, mortgage, or other instrument required to be recorded, is acknowledged in any county in this State, other than the one in which the same is required to be recorded, the acknowledgment shall be certified by the clerk of the circuit court of the county in which such officer resides, and attested by the seal of said court; but an acknowledgment before an officer, having an official seal, if attested by such official seal, shall be sufficient without such certificate.†

Acknowledgment of deeds out of the State.

SEC. 20. To entitle to record, in this State, conveyances acknowledged out of this State and within the United States, the same must be certified by the clerk of any court of record of the county in which the officer receiving the acknowedgment resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, attested by his official seal, shall be sufficient without such certificate.

*If a conveyance of real estate appear on its face to have been regularly executed, and its execution is attested by subscribing witnesses, it is admissible in evidence without a certificate of acknowledgment; an acknowledgment being essential to the admission of a deed to record, but not to its validity.—*Doe d. Wayman* vs. *Naylor*, 2 Blackf., 32.

†A conveyance of land, certified to be acknowledged before a notary public of one county, "under his hand and seal," may be admitted to record in another county in which the land lies.—*Doe d. Gardner* vs. *Vandewater*, 7 Blackford, 6.

Such conveyance, if recorded, may be proved by the record book, when the person offering the evidence is not a party to the conveyance and has not control of it.—*Ibid.*

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How deeds may be proved.

SEC. 21. All deeds may be proved according to the rules of the common law, before any officer authorized to take acknowledgments, and being so proved, shall be entitled to record.

Acknowledgment of deeds in foreign countries.

SEC. 22. An acknowledgment of any conveyance in a foreign country, as hereinbefore provided, requires no certificate other than the official seal of the officer taking said acknowledgment.

Married women

SEC. 23. It shall not be necessary for a married woman to acknowledge her deed in any form other than that required by unmarried persons.

Acknowledgment of a married woman under 21 and over 18 years, how taken.

SEC. 24. Any married woman over the age of eighteen years, and under the age of twenty-one years, may convey her right in and to any lands of her husband, sold and conveyed by him, by executing, and acknowledging the execution of such conveyance, if the father, or if there be no father, then the mother, of such married woman, shall declare, before the officer taking such acknowledgment, that he [illegible]s that such conveyance is for the benefit of such married woman, and that it would be prejudicial to her and her husband, to be prevented from disposing of the lands thus conveyed; which declaration, with the name of such father or mother, shall be inserted as a part of the certificate of the officer taking such acknowledgment.*

Form of an acknowledgment.

SEC. 25. The following or any other form substantially the same, shall be a good or sufficient form of acknowledgment of any deed or mortgage: "Before me, E. F. [a judge or justice, as the case may be] this —— day of ———, A. B. acknowledged the execution of the annexed deed, [or mortgage, as the case may be.]

Contents of deed to be explained in certain cases.

SEC. 26. Whenever before any public officer duly authorized to receive acknowledgment of deeds, the grantor of any deed shall sign the same with his or her mark, and also in all other cases in which the said public officer shall have good cause to believe that the contents and purport of said deed are not fully known to the grantor thereof, it shall be the

*A conveyance of land executed by a *feme covert* under twenty-one years of age, is not admissible evidence if objected to, unless the certificate of consent, &c., required by the statute of 1839, be proved, like any other written instrument with subscribing witnesses, by examining those witnesses or one of them, if they or either of them can be procured: if neither of them can be procured, resort must be had to the next best evidence.—*Sheets* vs. *Dufour*, 5 Blackf., 549.

A conveyance having been signed, sealed, and acknowledged by a husband and wife in due form, was sent by the former, in presence of the latter, to the recorder's office to be recorded. *Held*, in an action of disseisin by the grantee, that the conveyance had been legally delivered. A conveyance executed by a *feme covert* cannot be avoided by her after her husband's death on the ground that she had executed it under a misapprehension of her legal rights. An acknowledgment in the usual form by a *feme covert* of a conveyance before a magistrate, estops her and those claiming under her from saying that she had not freely and absolutely executed the conveyance.—*McNerly* vs. *Rucker*, 6 Blackf., 391.

See *Stevens* vs. *Doe d. Henry*, 6 Blackf., 475; *Watson* vs. *Clendenin et al.*, 6 Blackf., 477.

A *feme covert* cannot acknowledge a conveyance of real estate by an attorney in fact. *Dawson* vs. *Shirley*, 6 Blackf., 531.

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duty of the said public officer before signature, fully to explain to him or her, the contents and purport of the within deed. But the failure of such officer so to do shall not affect the validity of any deed. Married woman may join in a power to convey.

SEC. 27. A married woman may join in a power of attorney with her husband for the conveyance or mortgage of lands, or of any interest therein, and said power of attorney shall be duly acknowledged and shall be entitled to record. Certificate, how made and when attached.

SEC. 28. A certificate of the acknowledgment of the conveyance or other instrument in writing, required to be recorded, under the hand and seal of the officer taking the same, shall be written on or attached to such deed; and in all cases where, by law, the certificate of the clerk of the proper county is required to accompany the acknowledgment, the said certificate shall set forth that the officer before whom such acknowledgment was taken, was at the time, lawfully acting as such, and that his signature to the certificate of acknowledgment, is genuine. Record of deeds, how kept.

SEC. 29. Every recorder of deeds shall keep a book each page of which shall he divided into five columns, headed as follows, to-wit:

Date of Reception.	Names of Grantors.	Names of Grantees.	Description of lands.	Vol. and page. where recorded.

And the recorder shall enter in said book, all deeds and other instruments left with him to be recorded; noting in the first column the day and hour of receiving such deed or instrument, and the other particulars in the appropriate columns; and every such deed or instrument shall be deemed as recorded at the time so noted. Certificate as well as deed to be recorded.

SEC. 30. Every conveyance or other instrument entitled by law to be recorded, shall be recorded by the recorder of the county in which the lands embraced in such conveyance, is situate; together with the requisite certificate of acknowledgment or proof endorsed thereon or annexed thereto; and unless such certificate is recorded with such deed, neither the record of such conveyance, or other instrument of writing, nor any transcript thereof, shall be read or received in evidence. Conveyance proved may be read in evidence.

SEC. 31. Every conveyance so proved or certified as to be entitled to record, may be read in evidence in any court of justice, without further proof of the execution thereof; and the record of any such conveyance, or a transcript thereof duly certified or proved, may also be read in evidence with the like force and effect as the original thereof. Not to be conclusive.

SEC. 32. Neither the certificate of the acknowledgment of any conveyance or instrument of writing, nor the record, nor the transcript of the record thereof, shall be conclusive, but may be rebutted, and the force and effect thereof contested, by any party affected thereby. The term "grantor" defined.

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SEC. 33. The term "grantor," as used in this act, shall be construed to embrace every person by whom any estate or interest in lands is created, granted, bargained, sold, conveyed, transferred or assigned.

What deemed conveyances.

SEC. 34. All instruments of writing of and concerning lands, or concerning any interest therein, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale and purchase of land, shall be deemed a conveyance within the provisions of this act, so far as such provisions apply to the acknowledgment or proof of the same, the recording thereof, and the force and effect of such recording.

Letters of attorney.

SEC. 35. Letters of attorney, containing a power to any one, to sell or convey, or to sell and convey lands as the agent of the owner of the lands, and every executory contract for the sale or purchase of lands, when proved or acknowledged in the manner prescribed in this act for the proof or acknowledgment of conveyances, may be recorded in the county in which the lands, to which such letter or contract shall relate, may be situate; and when so proved or acknowledged, and the record thereof when recorded, and the transcript of such record, when duly certified, may be read in evidence, in the same manner, and with the like effect as in the case of a conveyance.

Estates tail abolished.

SEC. 36. Estates tail are abolished; and any estate which, according to the common law, would be adjudged a fee tail, shall hereafter be adjudged a fee simple; and if no valid remainder shall be limited thereon, shall be a fee simple absolute.

Freehold estates and chattels real may commence at a future day.

SEC. 37. A freehold estate, as well as a chattel real, may be created to commence at a future day; and an estate for life may be created in a term of years, with or without the intervention of a precedent estate, and a remainder limited thereon; a remainder of a freehold or a chattel real, either contingent or vested, may be created, expectant on the determination of a term of years.

Remainder.

SEC. 38. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate.

Grantee to take estate of grantor.

SEC. 39. A conveyance made by a tenant for life or years, purporting to grant or convey a greater estate than he possessed, or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee or alienee all the estate which the tenant could lawfully convey.

Power to convey never limited.

SEC. 40. The absolute power of aliening lands shall not be suspended by any limitation or condition whatever, contained in any grant, conveyance, or devise, for a longer period than during the existence of a life, or any number of lives, in being at the creation of the estate conveyed, granted, devised, and therein specified, with the exception that a contingent remainder in fee may be created on a prior remainder in fee, to take

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effect in the event, that the person or persons to whom the first remainder is limited shall die under the age of twenty-one years, or upon any other contingency by which the estate of such person or persons may be determined, before they attain their full age.

Limited remainders, when void.

SEC. 41. Where a remainder for life shall be limited on any other than a life or lives in being at the creation of such estate, and the life estates, subsequent to those persons entitled to take life estates, according to the provisions of the last preceding section shall be void; and upon the death of those persons entitled to take the remainder shall take effect, in the same manner as if such void estates had not been created.

CHAPTER 24.

AN ACT establishing general provisions respecting Corporations.

[APPROVED JUNE 15, 1852.]

What to be evidence of an organization of a corporation.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That when the steps necessary to an organization of a corporation, municipal or private, under any general law, have been completed, a statement thereof may be filed in the office of the clerk of the circuit court of the proper county, and such court at its next term thereafter, shall on proof of such organization, cause to be entered of record, in the order book, an order declaring the existence of such corporation, and such order shall be conclusive as to the fact of such existence, at the date which such court may fix in such order.

Powers of a corporation.

SEC. 2. Corporations shall, where no other provision is specially made, be capable, in their corporate name, to sue and be sued; to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine, all necessary officers, fix their compensation, and define their duties; to make necessary by-laws; determine the manner of calling and conducting meetings, the number that shall constitute a quorum, the number of shares that shall entitle the members to one or more votes: *Provided*, each stockholder shall have one vote for each share owned and held by him, for ten days previous to the meeting of the corporation, the mode of voting by proxy, the payment of assessments, and the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers.*

*A corporation legally created in any one of the States may sue in this State.—*Guage Iron Co.* vs. *Dawson*, 4 Blackf., 202.

If the declaration aver that the plaintiffs are a corporation by virtue of a

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Shares to be numbered

SEC. 3. Shares shall be numbered in progressive order, beginning at number one; and every stockholder shall have a certificate, under the seal of the corporation, signed by the treasurer, certifying his property in such shares.

First meeting of a corporation.

SEC. 4. The first meeting of all corporations shall, unless otherwise provided for, be called by a notice signed by three or more members, setting forth the time, place, and purposes of the meeting; and shall, ten days at least, before the meeting, be delivered to each member, or published in some news paper of the county where the corporation may be established, or if none, then in some newspaper in the State nearest thereto.

Powers.

SEC. 5. Such corporation may elect officers, fill vacancies and do other business properly before them.

Corporation to be continued three years after expiration of charter, to settle, &c.

SEC. 6. All corporations whose charters shall expire by limitation, forfeiture or otherwise, shall nevertheless be continued bodies corporate, for three years after the time they would have been so dissolved, for the purpose of prosecuting and defending suits, to which they are a party, and to enable them to settle, dispose of and convey their property, and divide the capital stock, but not to continue the business for which such corporations were established.

Any part of capital stock withdrawn, stockholders to be liable.

SEC. 7. If any part of the capital stock of such company shall be withdrawn and refunded to the stockholders, before the payment of all of the debts of the company, all the stockholders of such company shall be jointly and severally liable for the payment of such debts.

Persons acting in a fiduciary capacity not to be individually liable.

SEC. 8. No person holding stock in any such company, as executor, administrator, guardian, or trustee, or as collateral security, shall be personally subject to any liability as stock-

certain statute, a plea denying the existence of this statute, is in substance a denial of the existence of the corporation.—*Ibid.*

A person sued by a corporation is not estopped from denying that the corporation existed at the time the suit was commenced.—*Ibid.*

The circumstance that a person is a member of an incorporated company gives him no authority to release a debt due the corporation. A plea that a corporation was dissolved must show the causes and manner of dissolution.—*Harris* vs. *Musk. Man. Co.*, 4 Blackf., 267.

An incorporated company cannot sue in the name of the firm.—*Davis* vs. *Hubbard et al.*, 4 Blackf., 50. If an incorporated company sue in the name of the firm, the suit will be dismissed on motion.—*Hughes* vs. *Walker et al.*, 4 Blackf., 50.

The declaration in a writ by a corporation being signed by an attorney for the plaintiff, is sufficient evidence that the plaintiff appeared.—*State Bank* vs. *Bell*, 5 Blackf., 127. *Brook. In. Co.* v. *Records*, 5 Blackf., 170.

In a writ in a corporate name the declaration must not aver the plaintiffs to be a corporation.—*Richardson* vs. *St. Jo. Iron Co.*, 5 Blackf., 146.

See *Pitman* vs. *Kintner*, 5 Blackf., 250, where it is held that a provision by the president of "the Corydon Steam Mill Co.," made for a corporate debt, and executed by the president of the company, as such, under the corporate seal, in conformity to its by-laws, is a provision by a corporation for which it may be sued —See *Hay et al.* vs. *McCoy*, 6 Blackf., 69.

The contracts of corporations rest upon the same footing as those of natural persons, and are valid without seal, whether expressly made by the corporation, or arising by implication from the general relations of the agent towards the corporation, or from the ratification of acts as agents, although without sufficient authority.—*Ross* vs. *City of Madison*, 1 Carter's Ind. Rep., 281.

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holder of such company, but the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable therefor, and the person pledging his stock as aforesaid, shall be considered as holding the same.

Representation of stock in voting.

SEC. 9. Every such executor, administrator, guardian, or trustee, shall represent the share of stock in his hands, and vote as a stockholder, and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at such meetings, and vote accordingly.

Book with names of stockholders, &c., to be kept.

SEC. 10. A book shall be kept by the corporation at their office or principal place of business, containing the names of stockholders thereof, alphabetically arranged, showing their respective places of residence and number of shares held by them severally, and the time they became the owners of the same; which book shall at all business hours of the company be subject to the inspection of creditors, stockholders, or their representatives, and shall be permitted to take extracts from the same. Such book shall be presumptive evidence, in favor of the plaintiff, of the facts therein stated, in any suit or proceeding against such company, or stockholder thereof.

Penalty for failing to keep book, &c.

SEC. 11. Any company failing to keep the books to make the entries required, or to exhibit the same as directed in the preceding section, shall forfeit to the injured party a penalty of fifty dollars for every such instance of refusal or failure, and all damages resulting therefrom; and in addition, shall pay to the State of Indiana, the sum of fifty dollars for every day of such failure, to be sued for and recovered in the name of the State, by the prosecuting attorney of the district or county in which such corporation is situate; and when recovered, shall be paid into the treasury of the proper county for the use of common schools.

Upon the expiration of a charter, cir. court to appoint trustees to settle, &c.

SEC. 12. When the charter of any corporation shall expire, the circuit court of the county in which such corporation has its principal place of business, on application of any creditor, stockholder, or member thereof, within the said three years, may appoint one or more persons to be receivers or trustees of such corporation, to take charge of the estate and effects, collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits for the purposes aforesaid; and to appoint agents, and do all other acts which might be done by such corporation, if in being, necessary for the final settlement of the business of the corporation; and the power of such receivers may be continued beyond the said three years, and as long as the court shall think necessary for the purposes aforesaid.*

Jurisdiction of this court in such case.

SEC. 13. The said court shall have jurisdiction of such application, and of all questions arising in the proceedings there-

*A plea in abatement to an action by a corporation must show the forfeiture alleged to have been judicially declared. *John et al.* vs. *Farmer's & Mech. Bk. of Ind.*, 2 Blackf. 367.

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on, and may make such orders, injunctions, and decrees, as justice and equity shall require.

Duty of receivers or trustees.

SEC. 14. The said receivers shall pay all debts due from the corporation, if the funds in their hands be sufficient therefor, otherwise shall distribute the same rateably among all the creditors, proving their debts as directed by an order or decree of the court for that purpose; and if there be any balance remaining after the payment of said debts, the receivers shall distribute and pay the same to and among those justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives.

Disposition of surplus.

SEC. 15. If there be no person entitled to receive the same, or any part thereof, it shall be paid into the State Treasury, to be disposed of in such manner as the General Assembly may direct.

Judgt. vs. any corporation other than a bank, remaining unpaid for more than a year, &c, franchise to be forfeited.

SEC. 16. Whenever any judgment against any corporation, other than banking, shall have remained unpaid for the space of one year after the rendition thereof, and execution thereon is not stayed by appeal or supersedeas, the circuit court of the proper county shall have power to declare the franchise of such corporation forfeited, and appoint a receiver, who shall give bond, and reduce the assets of such corporation to possession, and pay the debts thereof, under the same rules prescribed for the government of administrators.

Compensation of receiver.

SEC. 17. The services of such receiver shall be paid by an allowance to be made by such court, out of such assets, and the surplus left after the payment of debts and costs, shall be distributed among the stockholders *pro rata*.

CHAPTER 25.

AN ACT respecting Foreign Corporations and their agents in this State.

[APPROVED JUNE 17, 1852.]

Agents of foreign corporations to deposit evidence of their authority in clerk's office.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That agents of corporations, not incorporated or organized in this State, before entering upon the duties of their agency in this State, shall deposit in the clerk's office of the county where they propose doing business therefor, the power of attorney, commission, appointment, or other authority under or by virtue of which they act as agents.

Agents to file with clerk the authority of the company to authorize process to be served on them, &c.

SEC. 2. Said agents shall procure from such corporations, and file with the clerk of the circuit court of the county where they propose doing business, before commencing the duties thereof, a duly authenticated order, resolution, or

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other sufficient authority of the board of directors or managers of such corporations, authorizing citizens or residents of this State, having a claim or demand against such corporation arising out of any transaction in this State with such agents, to sue for and maintain an action in respect to the same in any court of this State, of competent jurisdiction, and further authorizing service of process in such action on such agent to be valid service on such corporation, and that such service shall authorize judgment and all other proceedings against such corporation.

Service on agent deemed service on company.

SEC. 3. The service of process on such agents in actions commenced against such corporation, shall be deemed a service on the corporation, and shall authorize the same proceedings as in other cases.

Not to enforce contracts till they comply with sections 1 and 2.

SEC. 4. Such foreign corporations shall not enforce in any courts of this State, any contracts made by their agents or by persons assuming to act as their agents, before a compliance by such agents, or persons acting as such, with the provisions of sections one and two of this act.

Persons transacting business for such corporation deemed agents.

SEC. 5. Any person who shall directly or indirectly receive or transmit money or other valuable thing to or for the use of such corporations, or who shall in any manner make or cause to be made, any contract, or transact any business for or on account of any such foreign corporations, shall be deemed an agent of such corporation, and be subject to the provisions of this act relating to agents of foreign corporations.

Sec. 5 not to apply to persons temporarily acting.

SEC. 6. The foregoing section shall not apply to persons acting as agents for foreign corporations for a special or temporary purpose, or for purposes not within the ordinary business of such corporations, nor shall it apply to attorneys at law as such.

Penalty for violating act.

SEC. 7. Any person acting as agent of foreign corporations as aforesaid, neglecting or refusing to comply with the foregoing provisions as to agents, shall, upon presentment or indictment, be fined in any sum not less than fifty dollars.

CHAPTER 26.

AN ACT to provide for the Government and support of the Institution for the Education of the Deaf and Dumb.

[APPROVED JUNE 14, 1852.]

Trustees, how chosen; tenure of office.

SECTION. 1. *Be it enacted by the General Assembly of the State of Indiana*, That the government of the Institution for the education of the deaf and dumb of this State shall be committed to the charge of five trustees, one of whom shall be

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nominated by the Governor and confirmed by the Senate at the next regular session of the General Assembly, two at the first regular session thereafter, and three at the following regular session; and thence forward two and three shall be alternately nominated and confirmed at each regular session. These trustees shall serve four years from and after the second day of April succeeding their appointment, and until their successors shall be appointed and qualified, and the trustees now in office shall serve out their respective terms.

Proviso. *Provided however*, That the superintendent and teachers of said Institution shall not be eligible to the office of trustee for the same, nor shall any trustee be allowed to furnish materials for building purposes, nor shall they be either directly or indirectly interested in the purchase of any articles of merchandise or other supplies for the use of such Institution.

Oath. SEC. 2. Such trustees before entering upon the discharge of their official duties, shall take and subscribe an oath for the faithful performance thereof, which oath shall be entered of record in the office of the Secretary of State.

Trustees to make and report regulations, elect officers, and fix their compensation, &c. SEC. 3. Such trustees shall make all regulations necessary for the government of the Institution not otherwise provided for by law, and incorporate the same in the next report they may make thereafter to the General Assembly; and whenever a vacancy occurs therein, they shall elect a superintendent, physician, assistant physician, matron, teachers, and steward, who shall hold their offices during the pleasure of, and receive an annual compensation to be fixed by such trustees, the amount whereof shall be reported to the General Assembly.

Physician, matron, &c., how chosen. SEC. 4. The superintendent shall nominate the physicians, matron, teachers and steward, when a vacancy shall occur; and if such trustees shall refuse to confirm such nominations, the Governor shall nominate, and if such trustees shall refuse to confirm his nomination, the Secretary, Auditor, and Treasurer of State, in conjunction with such trustees, shall fill such vacancy.

Superintendent may employ operatives, &c. SEC. 5. The superintendent may appoint such operatives as are necessary to the proper management of the Institution, repairs of buildings, and cultivation of adjacent grounds belonging thereto, but all such appointments, together with the objects thereof, shall be reported to the trustees at their next meeting thereafter; when, if they refuse to ratify such proceedings, the superintendent shall discharge such appointees, and discontinue such repairs and cultivation, unless otherwise directed by such trustees.

Expenditure for building, when to be made. SEC. 6. No expenditure for building purposes shall be made for the benefit of said Institution, unless the same shall be recommended by the board of trustees, and consented to by the Governor, Secretary, Auditor, and Treasurer of State, or a majority thereof.

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Superintendent's report.

SEC. 7. The Superintendent shall report to the board of trustees at each session of the General Assembly, a detailed statement of the number of pupils admitted into the Institution; their places of residence, classifying those that are admitted free of charge and those that pay the tuition fees, and other expenses; the different gradations they occupy in the Institution in the course of instruction; the number of operatives employed, and their wages; the kind and cost of repairs, with the approval thereof by the proper officers, as provided in the preceding section; the amount of all expenditures made since the previous report, and for what purposes, presenting the amount expended for the salaries of superintendent, matron, physicians, teachers, and steward, for building material, if any, for steward's stores, clothing and fuel, and the probable sum necessary to defray the current expenses of the Institution until the ensuing session of the General Assembly; which report shall be embodied in that of the trustees.

Steward to give bond.

SEC. 8. The steward, before entering upon the duties of his office, shall give bond to the State in a penalty, and with surety to be approved by the Auditor of State, conditioned for the faithful performance of his official duties; such bond to be filed and preserved in the office of such auditor.

Current expenditures, how made.

SEC. 9. Upon the steward filing with such auditor a detailed statement of the objects and amounts of any expenditure necessary for his stores as such steward, for clothing and fuel, to the truth of which he shall take and subscribe an oath to be administered by such auditor; such auditor shall immediately notify the Governor, Secretary and Treasurer of State thereof, and if a majority of such officers be of opinion that the proposed expenditure is necessary for the proper management of the Institution, they shall direct the auditor to issue his warrant for the same to the Treasurer of State, who shall pay the same to such steward out of any money in the treasury, not otherwise appropriated.

Steward subject to the direction of the superintendent.

SEC. 10. The steward shall discharge his various duties under the direction of the superintendent, who shall examine all statements prepared by the steward, whether for past or contemplated expenditures, and the auditor shall receive no statement of the same from the steward, unless the approval of the superintendent is endorsed thereon.

Auditor to record allowances, &c.

SEC. 11. Such auditor shall keep a book in which he shall record all such allowances, and make an entry of the proceedings had thereon, and the names of the officers who voted therefor; and such steward shall, every three months, report to such auditor a detailed statement of all expendi-

Steward to report to auditor, &c.

tures he may have made during the preceding three months, to whom made, and for what purposes, to the truth of which he shall take and subscribe an oath; and which report shall be accompanied by proper vouchers, and be laid before the

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committee of ways and means at the next ensuing session of the General Assembly.

Allowance for building, to whom paid.

SEC. 12. Whenever an allowance is made for building purposes, the amount thereof shall be paid over by the Treasurer of State upon a warrant therefor from the auditor to the superintendent, who shall appropriate the same according to the terms of the allowance.

Sundry other allowances, how made.

SEC. 13. The superintendent, upon presenting a statement of the amount and object of any expenditure for operatives, books, apparatus, fixtures, furniture, repairs, or any other purpose not enumerated in section ten, [nine] to which he shall take and subscribe an oath, to be administered by the Auditor of State, may have a warrant therefor, under the same regulations as provided in case of allowance to the steward.

Superintendent's report to auditor, &c.

SEC. 14. The superintendent shall make a report to such auditor, under oath, every six months, of the persons to whom the money so allowed was paid, and the object thereof; which report, together with the proper vouchers, shall be handed over to the committee of ways and means, at the next session of the General Assembly thereafter.

Duty of auditor, Governor, &c., relative to reports of expenditures.

SEC. 15. Upon the presentation of any report of expenditures, the auditor shall carefully examine the same; and if, in his opinion, any moneys shall have been improperly expended, by the purchase of unnecessary articles at too high rates, or otherwise, he shall immediately notify the Governor, Secretary, and Treasurer of State, who, in conjunction with such auditor, shall immediately proceed to investigate the propriety of the expenditure, and in accordance with the decision of these officers, the account shall be audited: *Provided, however*, That previously to rendering an adverse decision upon any account, they shall notify the disbursing officer, and allow him to present such explanations, or adduce such testimony as he may desire in regard to the matter, and they shall have the same powers to summon and require the attendance of witnesses as are given to the circuit courts of the State.

Governor, &c., failing to decide, auditor may allow account.

SEC. 16. If the Governor, Treasurer and Secretary, shall fail to decide within three days, after having been notified by the auditor, upon any estimate of future expenditure, submitted by the superintendent or steward, then the auditor shall, if he considers the expenditure necessary, issue a warrant for the same.

Superintendent to give bond.

SEC. 17. The superintendent shall give bond to the State in a penalty, and with surety, to be approved by the Auditor of State, for the faithful performance of his official duties; which bond shall be filed and preserved in the office of such auditor; and if, from any cause, the penalty or sureties of such bond become insufficient, such auditor shall require such superintendent to execute an additional bond, or give other

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sufficient surety, and in default thereof such superintendent shall be removed from his office by the board of trustees.

Auditor may require additional penalty and sureties to bond of steward.

SEC. 18. Such auditor may require additional sureties and penalty to the bond of such steward, and on his failing to give such bond with such additional penalty and sureties, such steward shall be removed from office by the board of trustees.

Report of trustees.

SEC. 19. The board of trustees shall make a report at each regular session of the General Assembly, of the condition of the Institution, of which there shall be five thousand copies printed—three thousand for the use of the members of the General Assembly, and two thousand for the use of the superintendent.

Governor to fill vacancies in board.

SEC. 20. All vacancies in the board of trustees shall be filled by appointment by the Governor.

Salary of officers, how paid.

SEC. 21. The salaries of the officers of the Institution shall be paid quarterly, upon a certificate therefor from the board of trustees being presented to the Auditor of State, who shall issue his warrant therefor to the Treasurer of State, who shall pay the same out of any money not otherwise appropriated.

Legislature to make appropriations for current expenses.

SEC. 22. The General Assembly shall, at each regular session, appropriate a sum necessary to meet the current expenses of the Institution, until the next regular session thereafter.

Sectarian tenets not to be taught.

SEC. 23. No sectarian tenets of religion shall be taught in such Institution, to any pupil thereof.

When clothing to be furnished by State, and proceedings touching the same.

SEC. 24. In cases of extreme necessity only shall clothing be furnished at the expense of the State to any pupil of such Institution; and in such case the account therefor, subscribed and sworn to by such superintendent, shall be by him transmitted to the auditor of the county where such pupil shall reside; and upon the receipt of such account, such auditor shall issue his warrant upon the treasurer of such county for the amount of such account, which such treasurer shall transmit forthwith to the Treasurer of State; and such auditor shall present such account to the board of commissioners of such county, at their next session thereafter, when such board, unless, in their opinion, such pupil or his parents or guardians, are unable to pay such account, they shall direct such auditor to collect the same with ten per centum damages thereon.

Pupils without the State.

SEC. 25. Pupils from without the State may be admitted to the privileges of the Institution, on the payment of such sum as the board may consider sufficient to defray expenses.

Who entitled to education free.

SEC. 26. All mutes of the State shall be entitled to education in the Institution, free of charge, under such regulations as to age, capacity, character, and punctual attendance, as the board of trustees shall adopt.

Expulsion.

SEC. 27. The trustees shall expel from the Institution any pupil whose longer continuance in the same would be injurious thereto.

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CHAPTER 27.

AN ACT regulating descents and the apportionment of Estates.

[APPROVED MAY 14, 1852.]

Property to descend to children in equal proportions.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the real and personal property of any person dying intestate, shall descend to his or her children in equal proportions, and posthumous children shall inherit equally with those born before the death of the ancestor.*

Children of an intestate and remote descendants to inherit *per stirpes*

SEC. 2. If any children of such intestate shall have died intestate, leaving a child or children, such child or children shall inherit the share which would have descended to the father or mother, and grandchildren, and more remote descendants, and all other relatives of the intestate, whether lineal or collateral, shall inherit by the same rule: *Provided*, That if the intestate shall have left at his death grandchildren only alive, they shall inherit equally.

Proviso.

When an estate goes to the father and mother, or either of them, and to brothers and sisters.

SEC. 3. If any intestate shall die without lawful issue, or their descendants alive, one half of the estate shall go to the father and mother of such intestate, as joint tenants, or if either be dead, to the survivor; and the other half to the brothers and sisters and to the descendants of such as are dead, as tenants in common.†

Brothers and sisters to take as tenants in common; father and mother as joint tenants.

SEC. 4. If there be neither father nor mother, the brothers and sisters of the intestate living, and the descendants of such as are dead, shall take the inheritance as tenants in common. If there be no brothers or sisters of the intestate or their descendants, the father and mother shall take the inheritance as joint tenants, and if either be dead, the other shall take the estate.

Rules of inheritance in certain cases.

SEC. 5. If there be no person entitled to take the inheritance according to the preceding rules, it shall descend in the following order:

When to go to the paternal line.

First. If the inheritance came to the intestate by gift, devise, or descent, from the paternal line, it shall go to the paternal grandfather and grandmother, as joint tenants, and to the survivor of them; if neither of them be living, it shall go to the uncles and aunts in the paternal line, and their descendants, if any of them be dead, and if no such relatives be living, it shall go to the next of kin in equal degree of consanguinity, among the paternal kindred; and if there be none of the paternal kindred entitled to take the inheritance

*See *Hunt et ux. vs. Jordan et al.*, 4 Blackf. 532. See *Cunningham* vs. *Hogan, et al.*, 1 Carter's Ind. Rep. 94.

† An alien who died in 1832, and had taken no steps towards naturalization, could not transmit title to real estate to his heirs by descent. *Doe* vs. *Lazenby*, 1. Carter's Ind. Rep. 234.

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as above prescribed, it shall go to the maternal kindred in the same order.

Second. If the inheritance came to the intestate by gift, devise, or descent, from the maternal line, it shall go to the maternal kindred in the same order; and if there be none of the maternal kindred entitled to take the inheritance, it shall go to the paternal kindred in the same order. When to go to the maternal line.

Third. If the estate came to the intestate otherwise than by gift, devise, or descent, it shall be divided into two equal parts, one of which shall go to the paternal, and the other to the maternal kindred, in the order above described; and on the failure of either line, the other shall take the whole. When to go to the paternal and maternal lines equally.

SEC. 6. Kindred of the half blood shall inherit equally with those of the whole blood; but if the estate shall have come to the intestate by gift, devise, or descent, from any ancestor, those only who are of the blood of such ancester shall inherit: *Provided*, That on failure of such kindred, other kindred of the half blood shall inherit as if they were of the whole blood.* Kindred of the half blood.

SEC. 7. An estate which shall have come to the intestate by gift or by conveyance, in consideration of love and affection, shall, if the intestate die without children or their descendants, revert to the donor if living at the intestate's death, saving to the widow or widower, however, his or her rights therein: *Provided*, That the husband or wife of such intestate shall hold a lien upon such property for the value at the intestate's death, of all improvements by him or her made thereon, and for all moneys derived from the separate estate of such husband or wife expended in making such improvements. When the estate reverts to the donor. Proviso.

SEC. 8. Illegitimate children shall inherit from the mother as if they were legitimate, and through the mother, if dead, any property or estate which she would if living, have taken by gift, devise, or descent, from any other person. Illegitimate children.

SEC. 9. If a man shall marry the mother of an illegitimate child, and acknowledge it as his own, such child shall be deemed legitimate. Same.

SEC. 10. The mother of an illegitimate child dying intestate without issue or their descendants, shall inherit his estate; and if such mother be dead, her descendants or collateral kindred shall take the inheritance in the order hereinbefore prescribed. The maternal line to inherit estate of illegitimate children.

SEC. 11. The estate of a person dying intestate without kindred capable of inheriting, shall escheat to the State, and shall be applied to the support of common schools, in the manner provided by law. When the estate escheats.

*A person died intestate, leaving personal and real property (not derived from his father or mother) without issue, and without father or mother living. *Held*, that by the statute of 1831 the intestate's brothers and sisters of the half blood, and their descendants, were entitled to share with his brothers and sisters of the whole blood, and their descendants.

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Advancements.

SEC. 12. Advancements in real or personal property, shall be charged against the child or descendants of the child to whom the advancement is made, in the division or distribution of the estate, but if the advancement exceed the equal proportion of the child advanced, the excess shall not be refunded.

How advancement estimated.

SEC. 13. In the division or distribution of an estate, the amount or value of an advancement shall be estimated according to the amount or value when given.

What not deemed an advancement.

SEC. 14. Maintaining, educating, or giving money to a child under the age of majority, without any view to a portion or settlement in life, shall not be deemed an advancement.

Surviving husband and wife.

SEC. 15. Every rule of descent or distribution prescribed by this act, shall be subject to the provisions made in behalf of the surviving husband or wife of the decedent.

Courtesy and dower.

SEC. 16. Tenancies by the courtesy and in dower are hereby abolished.

Widow's portion.

SEC. 17. If a husband die testate, or intestate, leaving a widow, one third of his real estate shall descend to her in fee simple, free from all demands of creditors; *Provided however*, that where the real estate exceeds in value ten thousand dollars, the widow shall have one fourth only, and where the real estate exceeds twenty thousand dollars, one fifth only as against creditors.*

When the widow marries a second or subsequent time.

SEC. 18. If a widow shall marry a second or any subsequent time holding real estate in virtue of any previous marriage such widow may not, during such marriage, with or without the assent of her husband, alienate such real estate, and if, during such marriage, such widow shall die, such real estate shall go to her children by the marriage in virtue of which such real estate came to her, if any there be.

When the estate does not exceed three hundred dollars, the whole to go to the widow.

SEC. 19. If a husband die, testate or intestate, leaving a widow, and if the entire estate, real and personal, do not exceed three hundred dollars, it shall go without administration to the widow, free from all demands of creditors, in trust for herself and the infant children of the deceased, while they remain infants or unmarried, with remainder over to the widow, and if there shall be no such children, she shall take the whole: *Provided*, That if the widow shall marry while any of such children remain infants and unmarried, the husband shall, within ten days after such marriage, execute his bond, payable to the State of Indiana, in a sufficient penalty, and with security to the approval of the clerk of the proper court of common pleas, conditioned for the true and faithful application of such property, or so much thereof as the widow may have at the time of the marriage, to the benefit of such children, and in default thereof, the title to such property shall vest absolutly in such children.

Proviso.

*See *Crane* vs. *Palmer*, 8 Blackf. 120; *Pifer* vs. *Ward*, 8 Blackf. 252, *Fleming et al.* vs. *Fleming*, 8 Blackf. 234; *Cornby* vs. *Strader et al.*, 1 Carter's Ind. Rep. 134.

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When after payment of debts, estate is $300 or less, the whole to go to the widow.

SEC. 20. If a husband die, testate or intestate, and his estate, real and personal, exceed three hundred dollars, and be insolvent, or if, after payment of all his debts, less than three hundred dollars would remain, then, and in either of these cases, three hundred dollars of the same shall go to the widow, free from all demands of creditors, for herself, or in trust, as in the preceding section provided.

When the widow is entitled to $250.

SEC. 21. In all cases other than those provided for in the two preceding sections, a surviving wife shall be entitled, before any distribution, to three hundred dollars of personal property of her deceased husband, to be selected by her at its appraised value; or, if said property shall have been sold, then, to three hundred dollars out of the proceeds thereof, for which she shall not be required to account.*

Surviving husband's portion.

SEC. 22. If a wife die, testate or intestate, leaving a widower, one-third of her real estate shall descend to him; subject, however, to its proportion of the debts of the wife contracted before marriage.

When there is a widow and one child.

SEC. 23. If a husband die, intestate, leaving a widow and one child only, his real estate shall descend, one half to his widow and one half to his child.

Distribution of personal property among widow and children.

SEC. 24. If a man die, intestate, leaving a widow and a child or children not exceeding two, the personal property of such intestate shall be equally divided among the widow and children, the widow taking an equal share with one child, but if the number of children exceeds two, the widow's share shall not be reduced below one-third of the whole: *Provided*, That if a man marry a second or other subsequent wife, and has, by her, no children, but has children alive, by a previous wife, the land which, at his death, descends to such wife, shall, at her death, descend to his children.

When there are no children, but the widower or widow.

SEC. 25. If a husband or wife die, intestate, leaving no child, but leaving a father and mother, or either of them, then his or her property, real and personal, shall descend three-fourths to the widow or widower, and one-fourth to the father and mother jointly, or to the survivor of them: *Provided*, That if the whole amount of property, real and personal, do not exceed one thousand dollars, the whole shall go to such widow or widower.

There being no father, mother, nor children, the estate is to go to the widow or widower.

SEC. 26. If a husband or wife die, intestate, leaving no child, and no father or mother, the whole of his or her property, real and personal, shall go to the survivor.

Wife's portion of real estate.

SEC. 27. A surviving wife is entitled, except as in section seventeen excepted, to one-third of all the real estate of which her husband may have been seized in fee simple at any time during the marriage, and in the conveyance of which she may not have joined, in due form of law; and also of all lands in which her husband had an equita-

*This, like the statute of 1843, applies only to personal property.—*Jelly, Admr., vs. Elliott*, 1 Carter's Ind. Rep, 119.

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ble interest at the time of his death: *Provided*, That if the husband shall have left a will, the wife may elect to take under the will instead of this or the foregoing provisions of this act.*

*As the present law differs from the old only in the extent of the interest, and not in what the widow is dowable, the following decisions of the supreme court made under the old dower laws are appended:

After the alienation of real estate, and before the death of the grantor, the value of the estate was greatly enhanced by improvements made by the grantee. *Held*, that the dower of the grantor's widow should be assigned according to the value of the property at the time of the alienation.—*Wilson* vs. *Oatman*, 2 Blackf., 223.

A title bond conditioned for the conveyance of real estate, on payment of the purchase money, was executed, and possession at the same time given to the obligee. The purchase money was afterwards paid, and a title bond obtained by the purchaser. *Held*, that the date of the bond must be considered the period of alienation, in estimating the value of the widow's dower interest. —*Ibid.*

See sections 29, 30 and 31. See 4 Kent's Com., 35; 2 Black. Com., 129; 3 Blackf., 13, foot notes.

For the difference between the common law doctrine as to the interest in which the wife is dowable, and the statute of 1824, p. 157, and the statute of 1831, p. 209, and the extent of the wife's interest in equitable estates, see *McMahan* vs. *Kimball*, 3 Blackf., 1, where the leading authorities in the premises are cited.

A person having executed a mortgage in fee on his estate, married, and died without redeeming the mortgage. Two of the three payments on the mortgage were due at the mortgagor's death. The widow caused her dower to be assigned. The mortgagee filed a bill against the heir and personal representative for foreclosure and sale, and a decree was rendered by agreement for complainant. The commissioner not being able to sell the premises for a sum sufficient to pay the mortgage money, conveyed them to the mortgagee according to the direction of the decree. *Held*, that the widow of the mortgagor was not, under these circumstances, entitled to dower in the premises —*McMahan* vs. *Kimball*, 3 Blackf., 1.

A. sold, and by a general warranty deed conveyed to B. certain real estate, in part of which the wife of A., the vendor, had an inchoate right of dower. *Held*, in a suit against B. on his note given for part of the purchase money, that the existence of such right of dower could not be set up as a failure of the consideration of the note.—*Whisler* vs. *Hicks*, 5 Blackf., 100. Same point decided in case of *Smith et al.* vs. *Ackerman*, 5 Blackf., 541.

A. holding B.'s title bond for a town lot, died without having paid any part of the purchase money. His personal property being insufficient to pay his debts, his executors under an authority in the will, sold the lot to C., and with part of the proceeds paid B. for the lot, and caused him to convey it to C.; the residue they applied to the payment of the debts of the estate. *Held*, that A.'s widow, under the statute of 1831, was not entitled to dower in the lot.—*Smith et ux.* vs. *Addleman et al.*, 5 Blackf., 406.

If real estate be sold by executors, and after the sale, by extrinsic causes, not by building, &c., the value of the property is enhanced before assignment, the assignment of dower must be made according to the value of the property at the time of the assignment.—*Idem.*

If a widow do not redeem a mortgage executed by her husband and herself jointly, she has no more claim to dower than if the deed had been absolute.—*Watson* vs. *Clendenin et al.*, 6 Blackf., 477.

A widow cannot mortgage her dower till it has been assigned to her.—*Strong et al.* vs. *Bragg et al.*, 7 Blackf., 62.

In a suit in chancery for dower, it must appear that the complainant's husband was seized of the premises at some time during coverture, or she cannot recover.—*Dennis* vs. *Dennis*, 7 Blackf., 572.

The widow of a man against whom judgments existed at the time of the marriage, is entitled to dower (in the lands of which he was seized during coverture) subject to the judgments.—*Robbins* vs. *Robbins et al.*, 8 Blackf., 174.

See *Ostrander et al.* vs. *Spickard et al.*, 8 Blackf., 227; *Kelly et ux.* vs. *Stinson et al*, 8 Blackf., 387.

A court in granting a divorce on the application of the wife, for cruel treatment, &c., cannot, by decreeing alimony instead of dower, divest her of her

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Widow and children may reside in dwelling house one year.

SEC. 28. A surviving wife and minor children, shall in all cases be allowed to remain in the ordinary dwelling house of the family, and to occupy the same and the messuage thereunto appertaining, and fields adjacent, if any, not exceeding forty acres, free of rent, for one year from the death of her husband.*

Contracts for land.

SEC. 29. If the husband shall have made a contract for lands, and, at the time of his decease, the consideration in whole or in part shall not have been paid, but after his death the same shall be paid out of the proceeds of his estate; his widow shall have one-third of said lands in the same manner as if the legal estate had vested in the husband during the coverture.

Widow to be entitled to her portion of the amount paid on contract.

SEC. 30. If the husband shall have made a contract, subsisting at the time of his death, for real estate and paid only part of the consideration, and said real estate shall be sold after his death under any decree, or by virtue of any power or devise in the will of the husband, the widow shall be entitled to her third of such real estate, in proportion to the amount paid under said contract by the said husband.

Lands mortgaged.

SEC. 31. Where a husband shall purchase lands, during marriage, and shall, at the time of purchase, mortgage said lands to secure the whole or part of the consideration therefor, his widow, though she may not have united in said mortgage, shall not be entitled to her third of such lands, as against the mortgagee or persons claiming under him; but she shall be entitled to the same as against all other persons.

Wife's adultery.

SEC. 32. If a wife shall have left her husband, and shall be living at the time of his death, in adultery, she shall take no part of the estate of her husband.

Husband's adultery.

SEC. 33. If a husband shall have left his wife, and shall be living at the time of her death in adultery, he shall take no part of her estate.

Abandonment.

SEC. 34. If a husband shall abandon his wife without just cause, failing to make suitable provision for her, or for his children, if any, by her, he shall take no part of her estate.

Wife's rights not to be prejudiced by any conveyance, &c.

SEC. 35. No act or conveyance, performed or executed by the husband, without the assent of his wife, evidenced by her

dower interest in her husband's real estate.—*Russell* vs. *Russell*, 1 Carter's Ind. Rep., 510.

A. received a deed for land from B., and on the same day mortgaged it to the latter for the balance of the purchase money due. A. died in possession, and B. assigned the mortgage to a third person, who foreclosed it. *Held*, that under the statute of 1838, the widow of A. was entitled to dower in the equity of redemption—that being all the interest of her husband—and if the land had been sold for more than the debt, she would have been entitled to dower in the surplus.—*Nottingham et ux*, vs. *Calvert*, 1 Carter's Ind. Rep., 527.

*The statute authorizing the widow to continue in possession of the mansion house, applies only to persons claiming under her husband, not to those claiming under an adverse title. *Taylor* vs. *McCracken*, 2 Blackf. 260.

If a widow enter upon the lands of her deceased husband, other than the messuage belonging to the mansion house, and appropriate the proceeds to her own use, she is a wrong doer, and answerable to the proprietor of the lands for the rents and profits. *Grimes et al.* vs *Wilson et ux.*, 4 Blackf. 331.

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acknowledgment thereof, in the manner required by law; nor any sale, disposition, transfer, or incumbrance, of the husband's property, by virtue of any decree, execution, or mortgage, to which she shall not be party, except as provided otherwise in this act, shall prejudice or extinguish the right of the wife to her third of his lands or to her jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.*

Jointure.

SEC. 36. Whenever an estate in lands shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such intended wife, for the purpose of creating a jointure for such intended wife, or whenever, for the same purpose, a pecuniary provision shall be made for the benefit of the intended wife, the same shall be a bar to the right or claim of such wife in lands of her husband; *Provided*, the intended wife, at the time of the creation of such jointure, signified, in writing, endorsed upon, or attached to the deed creating said jointure, her assent to receive the same, in lieu of all right or claim of such wife in the lands of the husband.

Conveyance to an intended husband to be a bar, &c.

SEC. 37. Whenever an estate in lands or other property shall be conveyed to a woman and her intended husband or to such intended husband alone, as an equivalent for, or in lieu of, all right or claim of the said intended husband in the lands of his future wife; the same shall be a bar to such right or claim; *Provided*, the intended husband, at the time of the execution of such conveyance, signified, in writing endorsed upon, or attached to said conveyance, his assent to receive the same in lieu of all right or claim of such husband in the lands of the wife.

Jointure not less than a freehold.

SEC. 38. The jointure of the wife if consisting of real estate, must not be less than a freehold estate in lands, to take effect in possession or profit, immediately on the death of the husband.

When the wife is an infant.

SEC. 39. The assent of the wife to such jointure, if she be an infant, shall not be valid, unless her father, or if there be no father alive, then the mother, or if there be no mother, then the guardian shall join therein.

Wife to make election within one year, &c.

SEC. 40. If before her coverture, but without her assent, or if after her coverture, any such jointure or pecuniary provision shall be assured, or given for her jointure in lieu of her right to one-third of the lands of her husband, she shall make her election, within one-year after the death of

*Petition for assignment of dower. The defendant pleaded in bar that the guardian of the heirs obtained an order for the sale of lands; that the petitioner was present in court, and concurred in the application for the order; that the land was sold to the defendant, and the petitioner received a portion of the purchase money in payment of her right of dower; that she was present at the time and place of sale, and the commissioner then represented that the purchaser would acquire a title free from all claims, in which the petitioner concurred, and gave no notice of any claim of dower. *Held*, if the matters alleged were true, the petitioner was estopped from asserting a right of dower. *Ellis* vs. *Diddy*, 1 Carter's Ind. Rep. 561.

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her husband, whether she will take such jointure or pecuniary provision, or whether she will retain her right to one-third of the lands of her husband, but shall not be entitled to both.

Widow to elect between a devise and an inheritance.

SEC. 41. If lands be devised to a woman, or a pecuniary or other provision be made for her by the will of her late husband, in lieu of her right to lands of her husband, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will retain the right to one-third of the land of her late husband; but she shall not be entitled to both, unless it plainly appears by the will to have been the intention of the testator that she should have such lands, or pecuniary or other provision thus devised or bequeathed, in addition to her right in the lands of her husband.

If the surviving husband or wife be evicted from jointure, lands &c., he or she may take one-third.

SEC. 42. If a woman is lawfully evicted of lands assigned to her as jointure, or is deprived of provision made for her as jointure; or if a man is lawfully evicted of lands or deprived of other property conveyed to him in nature of a jointure, which assignment, provision or conveyance, had barred her or his right in the lands of her husband, or of his wife, as the case may be; then her or his right to a third of said lands shall revive and be in force.

Alienage of wife no bar.

SEC. 43. The alienage of any woman shall not bar her right to one-third of her husband's lands, if her husband was a citizen of the United States, or if, being an alien, he had complied with the laws of this State to entitle him to hold lands.

SEC. 44. This act to be in force from and after the first day of August eighteen hundred and fifty-two.

OF THE DEGREES OF KINDRED.

It is here necessary to explain how degrees of cognation are to be computed; and first we must observe, that there is one species of cognation which relates to ascendants, another to descendants, and a third to collaterals. The first and superior cognation is that relation which a man bears to his parents; the second or inferior is that which he bears to his children: the third is that relation which he bears to his brothers and sisters and their issue: and also to his uncles and aunts, whether paternal or maternal. The superior and inferior cognation commence at the first degree, but the transverse or collateral cognation commences at the second.

§ I. A father or mother is in the first degree in the right line ascending: and a son or a daughter is also in the first degree in the right line descending. A grandfather or grandmother is in the second degree in the right line ascending; and a grandson or granddaughter is in the second degree in the right line descending; and a brother or a sister is also in the second degree in the collateral line. A great-grandfather or a great-grandmother is in the third degree in the right line ascending; and a great-grandson or a great-granddaughter is in the third degree in the right line descending; and the son or daughter of a brother or sister is also in the third degree in the collateral line; and by a parity of reasoning, an uncle or an aunt, whether paternal or maternal, is also in the third degree. A paternal uncle, called *paternus*, is a father's brother; a maternal uncle, called *avunculus*, is a mother's brother; a paternal aunt, called *amita*, is a father's sister; and a maternal aunt, called *matertera*, is a mother's sister.

§ II. A great-great-grandfather or a great-great-grandmother is in the fourth degree in the right line ascending; and a great-great-grandson or a great-great-granddaughter is in the fourth degree in the right line descending. Also, in the trans-

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verse or collateral line, the grandson or the granddaughter of a brother or a sister is in the fourth degree; so is a great-uncle or a great-aunt, paternal or maternal, and cousins german, (*consobrini.*) But some have been rightly of opinion that the children of sisters are properly *consobrini quasi consororini;* that the children of brothers are properly brothers *patruel,* if males, and sisters *patruel,* if females; and that, when there are children of a brother and children of a sister, they are properly *amitini*; but the sons of your aunt by the father's side call you *consobrinus,* and you call them *amitini.*

§ III. A great-grandfather's grandfather or a great-grandfather's grand mother, is in the fifth degree in the line ascending, and a great-grandson or a great-granddaughter of a grandson or a ganddaughter is in the fifth degree in the line descending. In the transverse or collateral line, a great-grandson or great-granddaughter of a brother or sister, is also in the fifth degree; and consequently so is a great-great-grandfather's brother or sister, or a great-grandmother's brother or sister. The son or daughter also of a cousin german is in the fifth degree; and so is the son or daughter of a great uncle, or a great aunt, paternal or maternal, and such son or daughter is called *propior sobrino,* and *propior sobrina.*

§ IV. A great-grandfather's great-grandfather, or a great-grandfather's great-grandmother, is in the sixth degree in the line ascending; and the great-grandson or great-granddaughter of a great-grandson or a great-granddaughter, is likewise in the sixth degree in the line descending. And, in the transverse or collateral line, a great-great-grandson or great-great-granddaughter of a brother or sister, is also in the sixth degree; and consequently a great-great-grandfather's brother or sister, and a great-great-grandmother's brother or sister is in the sixth degree. And the son or daughter of a great-great-uncle or great-great-aunt, paternal or maternal, is also in the sixth degree; and so also is the son or daughter of the son or daughter of a great-uncle or great-aunt, paternal or maternal. The grandson, also, or the granddaughter of a cousin german is in the sixth degree; and, in the same degrees between themselves, we reckon the *sobrini* and the *sobrinæ*; that is, the sons and daughters of cousins german in general, whether such cousins german are so related by two brothers, or by two sisters, or by a brother and a sister.

§ V. It suffices to have shown thus far, how degrees of cognation are enumerated; and from the examples given, the more remote degrees may be computed; for every person generated always adds one degree; so that it is much easier to determine in what degree any person is related to another, than to denote such person by a proper term of cognation.

§ VI. The degrees of agnation are reckoned in the same manner.*—*Inst. Lib.* III, *Tit.* VI.

* *Agnates* are relations of the same family on the male side. Cognates are relations on the female side, etc.

CHAPTER 28.

AN ACT providing for the appointment of Deputies for certain officers, and prescribing their duties and liabilities.

[APPROVED MAY 13, 1852.]

What officers may appoint deputies.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana,* That every clerk of the supreme and circuit court, State and county auditor, State and county treasurer, the Secretary of State, prosecuting attorney, recorder, sheriff of the supreme and circuit court, coroner, surveyor, and constable, may appoint deputies.

Oath and duties of deputies.

SEC. 2. Such deputies shall take the oath required of their principals, and may perform all the official duties of such

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principals, being subject to the same regulations and penalties.*

SEC. 3. Such principals shall be responsible for all the official acts of their deputies. Principals to be responsible.

* A person cannot as deputy clerk, administer an oath, unless he has been appointed such deputy in writing, and been sworn according to law.—*Muir* v. *The State*, 8 Blackf., 154.

CHAPTER 29.

AN ACT to authorize the construction of Levees and Drains.

[APPROVED JUNE 12, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any number of persons not less than five, who may be interested in constructing any levee or drain, may associate themselves together and adopt and subscribe articles, which shall specify the name and objects of the association. How organized.

SEC. 2. Three or more members of the association may give notice, that at a time to be specified and at a convenient place near the contemplated work, an election will be held for the purpose of choosing directors for the company. The notice shall be posted up in at least five public places in the vicinity of the contemplated work for twenty days previous to the election. Notice of the election of directors.

SEC. 3. At the day appointed, a majority of the members of the association having met, shall appoint two judges and a clerk of the election from their number, who shall be sworn to the faithful discharge of their duties, and the members shall thereupon proceed to elect three of their number directors of the company. Judges and clerk of election.

SEC. 4. If a vacancy shall occur in the office of director, the other members of the board shall fill the same by a pro tem appointment, to continue until the next annual election, and until his successor is elected and qualified. Vacancy, how filled.

SEC. 5. The company shall cause their articles of association to be recorded in the recorder's office of the county or counties in which the contemplated work is situated, and thereafter such association shall be a body politic and corporate by the name and style so adopted, with all the rights, incidents and liabilities of bodies corporate, and other persons interested in the work may from time to time become members of the association by signing the articles, and the existence of such corporation shall be judicially taken notice of in the courts of the county or counties in which the articles are so recorded, without specially pleading the same. Articles to be recorded in recorder's office &c.

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To keep a journal.

SEC. 6. The company shall keep a journal of their proceedings, in which shall be entered the oath of the judges and clerk of the election, and the votes given for directors, and all orders of the board of directors which may be made from time to time; a majority of the directors shall form a quorum for the transaction of business.

Treasurer and clerk of Board.

SEC. 7. The board of directors shall appoint a clerk, who may be one of their number, and a treasurer, who shall require of him a bond with sufficient penalties and sureties, payable to the association by its corporate name, conditioned for the faithful discharge of his duties, and the safe keeping and prompt payment according to the order of the board of directors, of all moneys that may come into his hands. The directors, clerk and treasurer, shall each take an oath for the faithful discharge of ther respective duties, which shall be entered upon the journal.

Term of office.

SEC. 8. The directors, clerk and treasurer, shall continue in office for one year, and until their successors are chosen and qualified.

Money, how drawn.

SEC. 9. No money shall be drawn from the treasury except upon the order of the board of directors.

Treasurer to settle.

SEC. 10. The treasurer shall each year, before the expiration of his term, and as much oftener as the board of directors may require, present his vouchers and settle with the board.

May employ an engineer to survey, &c.

SEC. 11. The board is empowered to employ an engineer, and by themselves, their engineers and agents, to enter upon such lands as may be necessary to make a survey and estimate of the cost of construction of the proposed work, or of such repairs as may from time to time be necessary to its protection and preservation.

Appraisers, and assessment of damages.

SEC. 12. If the board of directors shall determine to construct any levee or drain, they shall appoint three appraisers, not members of the association, nor interested in the proposed work, nor in any lands to be effected thereby, who shall examine all the lands liable to be in any way affected by the proposed work, and shall make out a list of the same, and shall assess the amount of benefit or injury to each tract of land, and shall make out a schedule thereof with their assessments aforesaid, and shall append thereto their affidavit that the same is in all respects a true assessment to the best of their judgment and belief, which shall be filed with the clerk of the board, who shall cause the same to be recorded in the recorder's office of the county in which the lands lie, and from the time of such recording said assessment shall be a lien upon said lands for the amount of the assessment.

Notice of assessment.

SEC. 13. The owners of such lands shall, if being in the county, have notice of the time of the making of said assessment, and may attend before the appraisers, and shall have a right to be heard on the subject of the proposed assessment.

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Notice, how served.

SEC. 14. The notice shall be given personally, by the clerk, if the owner is in the county; otherwise, it shall be given by the publication of a notice addressed to all whom it may concern, for three weeks successively in a newspaper of general circulation most convenient to the proposed work, giving notice of the time the assessment will be made.

Board may order payment of assessments, &c.

SEC. 15. The board of directors may order the payment of the assessments in such time and manner, for the construction or repair of the work, as they shall deem proper, which shall be paid to the treasurer on demand, which may be made personally or by leaving a notice thereof, at the residence of the owner, if he resides in the county; if the owner does not reside in the county, no demand shall be necessary.

Lien, how enforced.

SEC. 16. If payment of the assessment be not made, the lien may be enforced by an action in the name of the association against the owner, in the circuit court or court of common pleas of the county in which the land, or a part of it, lies.

Defense to such suit.

SEC. 17. In any such action, the defendant may, if not a member of the association, deny that the work is of public utility, or that he is or will be benefitted thereby, the amount of the assessment or any part of it; and he may insist, whether a member or not, upon any other defence, to show that he ought not to pay the assessment or any part of it.

Injuries to be assessed and paid.

SEC. 18. If the appraisers shall find that any party is injured by the construction of such work, the amount of the injury shall be assessed by the appraisers, which shall be paid by the company, and may be enforced by an action as in other cases.

Appropriations of timber, stone, gravel, &c.

SEC. 19. If the association shall seek to appropriate any lands, timber, stone, gravel or other materials for the construction or maintainance of any such work, they shall proceed in the manner required by law for the assessment of like damages, in case of the construction of railroads, canals and other similar works.

CHAPTER 30.

AN ACT touching Easements.

[APPROVED MAY 13, 1852.]

Twenty years' adverse use of right of air, &c., sufficient

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the right of way, air, light, or other easement, from, in, upon, or over, the land of another, shall not be acquired by adverse use, unless such use shall have been continued uninterruptedly for twenty years.

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Notice.

SEC. 2. The owner of the land, or his agent or guardian may give notice to the claimant of such right, that he will dispute the same.

Service of notice.

SEC. 3. Such notice shall be in writing, served by an officer on the claimant, if he can be found; if not, on his agent, or guardian, if any; if not, a copy of the same shall be posted for the space of ten days, in some conspicuous place on or adjoining the premises where the right is disputed.

Notice, when deemed an interruption of use.

SEC. 4. Such service or notice shall be endorsed by the officer serving the same, on the original paper, and returned to the party giving such notice, who shall cause such original paper and endorsement of service or notice to be recorded in the recorder's office of the county where the land lies. And such notice thus served or posted and recorded, shall at the time of record be deemed an interruption of such use.

CHAPTER 31.

AN ACT regulating General Elections, and prescribing the duties of officers in relation thereto.

[APPROVED JUNE 7, 1852.]

What officers to be elected in October.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, A general election shall be held annually on the second Tuesday in October, at which all existing vacancies in office, and all offices, the terms of which will expire before the next general election thereafter shall be filled unless otherwise provided by law: *Provided*, the first election for members in Congress shall take place at the general election in October, 1852, and every second year thereafter.

Notice of election.

SEC. 2. The clerk of the circuit court shall, at least twenty days before such election, certify to the sheriff of his county, what officers are to be elected; and such sheriff shall give fifteen days' notice thereof, by posting up at all usual places of holding such elections, a copy of such certificate and by publication thereof in some newspaper of his county if any there be, and by delivering a copy thereof to the clerk of each township within the county, if there be any in such township, who shall notify the trustees of such township thereof.

President of township trustees to be inspector.

SEC. 3. The president of the board of township trustees shall, by virtue of his office, be inspector of elections of such township, and the board of county commissioners of the proper county, may designate one additional or more places

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of holding elections in any township, or form precincts of two or more townships when the public convenience requires it.

When there is more than one precinct in a township.

SEC. 4. In case such board shall designate more places of voting in any township, or form a precinct of two or more townships, such board shall annually, at the June term, appoint some elector of such new precinct, to act as inspector thereof, and such inspector shall previously to the time of opening the election, select two qualified voters of the precinct, who, with himself, shall constitute a board of judges of such election, and such board shall appoint two clerks; but in case there is but one precinct in a township, and such township forms a precinct, such elections shall be conducted by the officers and regulated by the laws provided for the government of such township, except as herein otherwise provided, and in case there is more than one precinct in any such township, and there shall not be in attendance on the day and at the hour appointed for any such election, the officers authorized to conduct the same, the qualified electors present, shall choose such officers according to the regulations hereinafter provided in section six of this act.

Electors, where to vote.

SEC. 5. Each elector shall vote in the township or precinct, in which he resides.

In the absence of inspector, voters to elect.

SEC. 6. Each inspector and judge of elections shall attend at the place of holding elections in his township or precinct, at or before eight o'clock in the morning of the day of elections; and should such inspector not appear at that hour, then the qualified electors of that township or precinct, who may be present, shall appoint an inspector of the election, and such inspector shall proceed to elect two judges, and such judges shall elect two clerks, as provided in section four of this act.

Oath of officers.

SEC. 7. Before any election shall be opened, the inspector and judges shall each make oath to support the constitution of the United States, and of this State, to faithfully and impartially discharge the duties assigned by law; that they will not knowingly permit any person to vote who is not qualified, and not knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of the qualifications of such person as an elector.

Inspector may administer oath.

SEC. 8. If no person present is authorized by law to administer the oath of office, the inspector shall administer the same to the judges, and one of such judges shall then administer said oath to the inspector.

Inspector to administer oath to clerk, &c.

SEC. 9. The inspector shall be chairman of such board; and before the reception of any votes, shall administer an oath to each of the clerks of the election, that they will faithfully discharge their duties. After the organization of the board of judges the inspector may administer all necessary oaths which may be required in the discharge of their duties.

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Vacancy in board, how filled.

SEC. 10. A majority of such board of judges may fill any vacancy occurring in the board of judges, or office of clerk.

Forms of poll books and returns.

SEC. 11. The board of county commissioners in each county, at their first meeting in every year, shall cause a suitable number of blank forms of poll books, containing one column headed, "names of voters," and an additional column headed, "number of votes," and also forms of election returns, with the proper captions, and forms of certificates to be made out for and delivered to each inspector, by the sheriff at least ten days previous to the next election.

Ballot box.

SEC. 12. Such board shall provide a sufficient number of ballot boxes, at the expense of the county, for the several inspectors, to be kept by them and delivered over to their successors in office.

Box to be locked.

SEC. 13. Each box shall be provided with a sufficient lock and shall be locked before the opening of the election, and the key delivered to one of the judges, and the box shall not be opened during the election, except in the manner and for the purposes hereinafter provided.

Opening and slide in box.

SEC. 14. An opening shall be made in the lid of each box, sufficient only for a single ballot, with a slide inside to close the same.

Opening of election, and when closed.

SEC. 15. The election shall be opened in the forenoon, between the hours of eight and ten o'clock, and continue open until four o'clock of the afternoon with an intermission, if the board desire it, of one hour at noon; after which the board may close the election at any time, when all the electors present have voted, or have had an opportunity of voting, or when fifteen minutes have passed without a vote having been tendered; but the polls shall, in no case, be kept open after six o'clock of the afternoon.

SEC. 16. The board of judges, before receiving ballots, shall cause to be proclaimed that such election is opened.

The ticket.

SEC. 17. The ballot ticket shall contain, written or printed, the names of the persons for whom the elector intends to vote; and shall designate the office to which each person so named is intended by him to be chosen.

Duties of officer when an offer to vote is made.

SEC. 18. When any person offers to vote, the inspector shall pronounce his name in an audible voice, and if there be no objection he shall receive his ballot; and in the presence of the other judges, put the same unopened into the ballot box, when the name of such elector shall be again distinctly repeated, by one of the other judges in the presence of the clerks.

Name of voter to be entered.

SEC. 19. The name of each elector, as he votes, shall be entered and numbered by such clerk in the column of his poll list headed, "names of voters."

Challenges.

SEC. 20. Any person offering to vote may be challenged as unqualified, by any person entitled to vote at such poll, and in all cases, the inspector and each judge shall challenge any person offering to vote, whom he shall know or suspect

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not to be qualified, and to any person so challenged, such board shall declare the qualifications of an elector.

Oath to person challenged.

SEC. 21. If such person insist that he is entitled to vote, and the challenge be not withdrawn, such board shall administer to him the following oath: You do swear (or affirm) that you are a citizen of the United States; that you are over the age of twenty-one years, according to the best of your information and belief; that you have resided in this State, during the six months immediately preceding this election; that you are at this time a resident of this township or precinct, (as the case may be;) that you are generally known by the name in which you now ask to vote; and that you have not voted at any other poll at this election; and in case of persons of foreign birth, that part of the oath relative to citizenship shall be dispensed with, and the following substituted: That you have resided in the United States one year, and have declared your intention to become a citizen of the United States in conformity with the laws thereof.

After taking oath, party to vote.

SEC. 22. If the person challenged take such oath, he shall be admitted to vote, and it shall not be lawful thereafter, for said board to examine any witnesses touching his qualifications; but if he refuse to take such oath, they may swear and examine other witnesses.

Persons convicted of crimes not to vote.

SEC. 23. No person who has been convicted of an infamous crime, shall be entitled to vote at such election; unless such conviction shall have been legally reversed, or such person shall have been pardoned, and legally restored by such pardon, to the rights of an elector, or unless the period of his disfranchisement shall have expired.

When a vote is challenged be cause of crime.

SEC. 24. If the vote of any person be challenged on the ground that he has been convicted of an infamous crime, or disfranchised, he shall not be required to answer any questions respecting such alleged conviction; nor shall any proof thereof be received other than the record, or a duly authenticated copy thereof, except such proof as may be necessary to establish his identity with the person named in such record, or may be adduced by him to rebut the evidence of identity produced on behalf of the challenge.

SEC. 25. When the polls are closed, proclamation thereof shall be made at the place of voting, and no votes shall be afterwards received.

Count of votes.

SEC. 26. When the polls are closed, or at any time after four o'clock of the afternoon on the day of the election, when the judges are at leisure, they may open the ballot box and commence counting the votes; when the ballots shall be taken out carefully, one by one, by the inspector, who shall open them as he takes them out, and read aloud the name of each person printed or written thereon, and the office for which every such person is voted; he shall then

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hand the ballot to one of the judges, who shall examine the same, and hand it to the other judge, who shall string it on a thread of twine.

Two tickets folded together, &c.

SEC. 27. If two tickets are found purposely folded together, they shall both be rejected; and if more persons are designated on any ticket to any office than are to be elected to such office, such part of the ticket shall not be counted to any of them; but no ticket shall be lost for want of form, if the board of judges can determine, to their satisfaction, the person voted for and the office intended.

When not to publish statement of votes.

SEC. 28. No clerk or judge of any election shall vote after commencing to count the votes; nor publish any statement of the result of their counting, until such election is closed.

May adjourn: count of votes.

SEC. 29. As soon as the election shall have been closed, or at any stage of the counting thereafter, the board of judges may adjourn to the next day, at which time they shall proceed to complete the counting.

Disposition of poll books and box on such adjournment.

SEC. 30. At such adjournment the poll lists and tally papers shall be placed in the ballot box with the ballots; the box shall then be locked, and the seal of one or more of the judges so placed thereon, as to cover entirely the opening in the lid; the key shall then be delivered to one of the judges, and the box to the inspector, to be kept by them respectively, until the time for resuming the counting, and the board of judges shall have re-assembled.

Certificate of judges.

SEC. 31. When the votes shall be counted, the board of judges shall make out a certificate, under their hands, stating the number of votes each person has received, and designating the office, which number shall be written in words, and such certificate, together with one of the lists of voters, and one of the tally papers, shall be deposited with the inspector, or with one of the judges, selected by the board of judges.

Board of canvassers.

SEC. 32. The inspector of each township or precinct, or judge of election, to whom such certificate, poll book, and tally papers shall have been delivered, shall constitute a board of canvassers, who shall canvass and estimate the certificates, poll lists, and tally papers returned by each member of said board, for which purpose they shall assemble at the court house, on Thursday next succeeding such election, between the hours of ten A. M., and six o'clock, P. M.

Chairman and clerk of board.

SEC. 33. The members of such board who shall assemble at such time and place, shall select one of their number as chairman, and the clerk of the circuit court shall act as their clerk.

Proceedings of board.

SEC. 34. Such board when organized shall carefully compare and examine the papers entrusted to them, estimate from them the vote of the county; a statement of which shall be drawn up by the clerk, and shall contain the names of the persons voted for, the office, the number of votes given in

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each township to each person, the number of votes given to each in the county, and also the aggregate number of votes given, which statement shall be signed by each member of said board, and with such certificates, poll books, and tally papers, delivered to the clerk, and by him filed in his office.

To declare the person elected, &c.

SEC. 35. Such board shall declare the person having the highest number of votes given for any office to be filled by the voters of a single county duly elected to such office, and certify the same in the statement above required.

In case of tie vote.

SEC. 36. If two or more persons shall have the highest and an equal number of votes for a single office to be filled by the voters of a single county, such board shall forthwith declare that no person is elected to fill such office, and shall certify the same in their statement; and when filed the clerk shall certify that fact to the tribunal whose duty it is to supply vacancies in such office, or to issue a writ of election to fill the same, as the case may require.

No tally book, &c., to be rejected for want of form.

SEC. 37. No tally paper, poll book, or certificate, returned from any election by the board of judges thereof, shall be rejected for want of form, nor for lack of being strictly in accordance with the directions herein contained, if the same can be satisfactorily understood.

Certificate and commission.

SEC. 38. When any person is elected to an office by the voters of a county, not to be commissioned by the Governor, and such election is not contested, the clerk of the circuit court shall after ten, and within twenty days from the time the board of canvassers have made their return, make out and deliver on demand, to such person, a certificate of his election, and in case where any officer is to be commissioned by the Governor, he shall make out a statement under his hand and the seal of his court, specifying the number of votes given to each person, for each office, and who has been declared elected, and shall transmit the same by mail to the Secretary of State, within the time aforesaid.

Certificates, poll books, &c., to be preserved.

SEC. 39. The certificates, poll books, and tally papers, forwarded to the board of canvassers, shall be preserved by the clerk of the circuit court, open to the inspection of any legal voter of the county or district. The other papers and ballots shall be kept by the inspectors for the term of six months, except when such election is contested, then they shall be preserved, subject to the order of any court trying such contest until the same is determined.

Commission not to be withheld on account of defect in return.

SEC. 40. No commission shall be withheld by the governor on account of any defect or informality in the return of any election to the office of the Secretary of State, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such commission.

When two or more counties are concerned.

SEC. 41. When two or more counties compose a district to elect a Senator or Representative, the clerks of the circuit court of such counties, on the day next succeeding the return day of such election, shall make out a certificate of votes re-

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ceived by each individual, for Senator or Representative, and deliver the same to the sheriff.

Sheriffs, when to meet and where.

SEC. 42. Such sheriffs shall meet on the Wednesday next following the return day of such election, between the hours of one and six of the afternoon, at the court house of the oldest connty in such district, where they shall compare the certificates delivered to them by the clerks, and shall jointly make out and transmit to the person having the highest number of votes for Senator or Representative, a certificate of his election; the county first organized, or if two or more were organized at the same session, then the county having, by the Auditor of State's last report the highest number of taxable polls, shall be deemed the oldest.

In case of tie.

SEC. 43. If in such case any two or more persons shall have the highest and an equal number of votes for the same office, such sheriffs shall certify that fact to the clerk of the circuit court of the county in which such sheriffs shall have compared such votes, and such clerk shall forthwith certify the same to the governor.

Clerk to make out certificate and deposit in post office.

SEC. 44. Clerks of the circuit court, on the day succeeding the return day of such election, shall make out in words, certified statements officially sealed, of the number of votes given to each person for governor and lieutenant governor, for representative in congress, judges of the supreme and circuit courts, and court of common pleas, clerk of the supreme court, reporter of the decisions of the supreme court, prosecuting attorneys, superintendent of public instruction, Secretary, Auditor and Treasurer of State, and for senator and representative in the General Assembly; and shall deliver the same to some post master of the county, to be transmitted by mail to the Secretary of State, taking from such postmaster, and filing a certificate, setting forth particularly the time when such certified statement was deposited in such post-office.

Secretary of State to compare votes.

SEC. 45. The Secretary of State shall in the presence of the Governor, compare and estimate the number of votes given for judges of the supreme court, reporter of the decisions of the supreme court, clerk of the supreme court, Secretary, Auditor, and Treasurer of State, and superintendent of public instruction, and certify to the Governor, the person receiving the highest number of votes for such offices, and also compare, and estimate the number of votes given for judges of the circuit court, and judges of the court of common pleas, and prosecuting attorneys, and to certify to the Governor the person having received the highest number of votes in their respective district or county, and thereupon the Governor shall transmit by mail to such persons, their commissions.

To compare votes for congressmen, &c.

SEC. 46. The Secretary of State, as soon as he shall receive such certified statements, shall compare and estimate the votes given for Representives in Congress, and certify to

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the Governor, the person having the highest number of votes, as duly elected; and the Governor shall give to each of the persons returned to him, as aforesaid, a certificate of his election, sealed with the seal, and attested by the Secretary of State.

Duties of clerk in election for Governor and Lieut. Gov.

SEC. 47. Each clerk of the circuit court shall on the day following the return day of an election for Governor and Lieutenant Governor, make out at full length, two certified statements, under the seal of his court, of the number of votes each candidate received, one of which he shall transmit to the speaker of the House of Representatives of the next General Assembly, by his Senator or Representative, who shall deliver the same to such speaker, on or before the second day of the session, and the other certified statement shall be transmitted by mail to Indianapolis; directed to said speaker, and to the care of the Secretary of State; by whom the same shall be delivered to the speaker, on or before the second day of the session.

Compensation of officers of election.

SEC. 48. Each inspector, judge and clerk of any election, held according to the provisions of this act, shall have credit for one day's work on the public roads of his proper road district, for every day he shall be employed in attending an election; except that whenever more than three hundred votes are taken at any poll, the board of county commissioners may make to such inspector, judges, and clerks, such additional compensation as shall be just and reasonable.

Same.

SEC. 49. But in all cases where any inspector, judge, or clerk of an election shall not be bound by law to work in person, nor owe road tax on the public roads, said board of county commissioners shall allow each such inspector, judge or clerk, seventy-five cents per day for his services.

Compensation of returning judge.

SEC. 50. Such board shall allow each returning judge or inspector of an election, a reasonable compensation for his services as such.

Emergency.

SEC. 51. As this act in the usual course of publication, will not be circulated in the several counties before the October election, it is hereby declared a case of emergency, and this act shall be in force from and after its passage.

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CHAPTER 32.

AN ACT in relation to Special Elections.

[APPROVED MAY 13, 1852.]

When special election to be held.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That a special election shall be held in the following cases:

Senator or Representative.

First. Whenever a vacancy shall occur in the office of Senator or Representative during a session; or, when the legislature will be in session, after the occurrence of vacancy and before a general election.

Representative in Congress.

Second. Whenever a vacancy shall occur in the office of Representative in Congress while in session, or when Congress will be in session after such vacancy occurs, and before a general election.

When an equal number of votes.

Third. Whenever two or more persons receiving votes at any election shall have the highest, and an equal number of votes for the same office.

Vacancy to be filled, &c.

Fourth. Or whenever a vacancy occurs in any office required to be filled at a special election.

To be ordered by the Gov.

SEC. 2. Special elections, not otherwise provided for, shall be ordered by the Governor, who shall issue a writ or writs of election, directed to the sheriff or sheriffs of the proper county or counties, and such writ shall specify the county, district or circuit, in which such election is to be held, the cause and object of such election, the name of the person whose office is vacant, and the day on which such election shall be held, which day shall be the same, in case such election is held in a district or circuit formed of two or more counties.

Notices.

SEC. 3. The sheriffs who receive such writs ordering a special election, shall give the same notices thereof as are required of general elections: *Provided*, such notice may be set up and published ten days only.

Such elections to be governed by the laws regulating general elections.

SEC. 4. All special elections shall be conducted, returned, certified, canvassed, and certificates and commissions shall issue, and shall in all respects be governed by the law regulating general elections, so far as the same is applicable.

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CHAPTER 33.

AN ACT to provide for Township Elections.

[APPROVED JUNE 15, 1852.]

Township elections to be held on the first Monday in April.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be held an election in each township, at the usual place of holding elections, on the first Monday in April, in each year, for the purpose of electing township officers, and such other officers as may be provided for by law, which election shall be conducted by the officers of, and governed by the laws regulating general elections, so far as the same are applicable.

Judges to count votes and give certificates.

SEC. 2. The board of judges shall count the votes given for each person, for such offices, and shall declare the result of such election, and shall give a certificate thereof, to such persons as are elected, which certificate shall entitle such persons, having complied with other requirements of the law, to take upon himself the duties of such office, except as otherwise provided by law.

Tie.

SEC. 3. In case of a tie at such election, it shall be determined by lot, in the presence of the judges.

CHAPTER 34.

AN ACT to provide for contesting the election to any State, district, circuit, county or township office.

[APPROVED MAY 4, 1852.]

Who may contest.

Be it enacted by the General Assembly of the State of Indiana: SECTION 1. The election of any person declared elected by popular vote to any office, may be contested by any elector who was entitled to vote for such person: The person contesting such election shall be known as the contestor; the person whose election is contested, as the contestee.

How the election of State officer may be contested.

SEC. 2. When such elector may choose to contest the election of any State officer, elective by the people, he shall, within twenty days after the first day of the next session of the General Assembly thereafter, deliver to the presiding officer of the House of Representatives, a specification of the grounds of such contest; which specification shall be verified by the affidavit of such elector.

Notice of contest.

SEC. 3. As soon as such presiding officer receives such specifications he shall make out a notice of contest, which,

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together with a copy of the specifications, he shall cause to be directed and delivered to the person whose election is contested; and shall immediately give notice to both houses that such specifications have been received.

Contest how tried.

SEC. 4. Each house shall choose by a *viva voce* vote, seven members of its own body, and the members thus selected shall constitute a committee to try and determine such contested election; and for that purpose shall hold their meetings publicly, at the capitol, at such time and place as they may designate; and may adjourn from day to day, or to a day certain, until such trial shall be determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to the contestor and the person whose right is contested; and shall report their judgment in the premises to both branches of the General Assembly, which report shall be entered on the journals of the respective houses; and the judgment of such committee shall be conclusive; and if such election be adjudged invalid, such office shall be vacant.

Contest of election of member of General Assembly.

SEC. 5. Any such elector who may choose to contest the election of any person declared elected to a seat in the Senate, or House of Representatives, shall, within ten days after such election, file with the clerk of the circuit court of the county in which the alleged cause of contest originated, a statement of the grounds of contest on which he relies; and that he was entitled to vote at such election, verified by his affidavit.

Same.

SEC. 6. When such statement shall be filed, such clerk shall issue a commission directed to two justices of the peace of his county not of kin to the contestor, nor to any person who was a candidate at such election for the office the election to which is contested, to meet at such time and place as shall be specified in such commission, not less than twenty, nor more than thirty days from the time of issuing the same, for the purpose of taking the depositions of witnessess.

Notice of such contest.

SEC. 7. Written notice of such contest, specifying the time and place of taking depositions, and before whom to be taken, and a copy of such statement, certified by such clerk, shall within ten days after such statement shall have been filed, be delivered to the contestee, or if he cannot be found, shall be left at his last usual place of residence, by the sheriff of the county, who shall return to such clerk a certified copy of such notice, with the manner and time of service endorsed thereon, for which he shall receive from the contestor the same fees allowed in writs of summons.

Power of justices.

SEC. 8. Either of such justices shall have power to issue subpœnas, to be served by the sheriff; and when met at the time and place appointed to take depositions, shall have the same power to issue attachments, and assess fines against witnesses, as is given to justices in the trial of suits instituted before them.

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Where justice cannot proceed, clerk may fill vacancy.

SEC. 9. If either of the justices first appointed, becomes unable to proceed in such examination, such clerk shall fill the vacancy with any other justice of the county.

Duty of justices.

SEC. 10. Such justices shall meet at the time and place appointed, and take and certify such depositions, as in other cases; and may adjourn from time to time, and when the same is closed, shall deliver the depositions, with the commission, to such clerk.

Clerk shall transmit depositions, &c., to Secretary of State.

SEC. 11. Such clerk shall seal up the depositions, original statement of the grounds of contest, the copy of the notice served on the contestee, and the commission issued to such justices; endorse thereon the names of the contesting parties, and the branch of the legislature before which such contest is to be tried, and transmit the same by mail to the Secretary of State.

Secretary to lay them before the proper house.

SEC. 12. The Secretary of State, on or before the second day of the session of the General Assembly held next thereafter, shall deliver such depositions to the presiding officer of the proper house, who shall immediately lay the same before such house.

When and how depositions may be taken to be used on trial, &c.

SEC. 13. At any time after notice of contest, and before final determination, either party may take depositions, to be read on the trial, under the rules regulating the taking of depositions, to be read in the circuit court, and such depositions shall be sent by mail to the Secretary of State, who shall deliver the same unopened, to the presiding officer of the proper house.

For what causes election may be contested.

SEC. 14. Any election, the contest of which is provided for in this act, may be contested for any of the following causes:

First. For malconduct of any member or officer of the proper board of judges or canvassers.

Second. When the contestee was ineligible.

Third. When the contestee, previous to such election, shall have been convicted of an infamous crime; such conviction not having been reversed, nor such person pardoned at the time of such election; or,

Fourth. On account of illegal votes.

Election, when to be set aside for irregularity, illegal votes, &c.

SEC. 15. No irregularity or malconduct of any member or officer of a board of judges or canvassers, shall set aside the election of any person, unless such irregularity or malconduct was such as to cause the contestee to be declared elected, when he had not received the highest number of legal votes; nor shall any elector be set aside for illegal votes, unless the number thereof given to the contestee, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office.

Contest of election of county officer, &c., where to be tried, &c.

SEC. 16. All contests for county and township offices shall be tried in the proper county; and no contests for district and circuit offices, not otherwise provided in this act,

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shall be tried in the county giving the largest vote for such office at such election; and whenever any elector shall choose to contest such election, he shall file with the auditor of the proper county, within ten days after such person has been declared elected, a written statement specifying the grounds of contest, verified by the affidavit of such elector.

Notice to clerk.

SEC. 17. When such statement is filed with the auditor of the proper county, he shall immediately give notice in writing to the clerk of the circuit court, that the election to such office is contested; and when the office of county auditor is contested, such statement shall be filed with the clerk, who shall do the duties otherwise required by this act of the auditor; the filing of such statement being notice to himself.

Notice to commissioners and contestee.

SEC. 18. When such statement is filed with the auditor, he shall issue a notice to the board of county commissioners to meet at the court house at a designated time, not less than ten, nor more than twenty days thereafter, to try such contested election, and shall issue a notice to the contestee to appear at the time and place, specified in the notice to the commissioners, which, with a copy of such statement, shall be delivered to the sheriff of the county, who shall, within five days thereafter, serve the same on the contestee, by delivering to him a copy of such notice and statement, or leaving a copy thereof at his last usual place of residence.

Power and duty of board in trying contest.

SEC. 19. The auditor at the request of either party shall issue subpœnas, which shall be served by the sheriff; such board of commissioners shall try and determine such contest, and shall have power to compel the attendance of witnesses to swear and examine the same, to punish contempts as other courts, to adjourn or continue the trial from time to time, not exceeding twenty days, and to make the necessary orders for the payment of costs, and to coerce the payment of the same; and shall be governed in such trial by the rules of law obtaining in circuit courts; and if it be proved that any person other than the contestee, has the highest number of legal votes, such board shall declare such person elected and certify the same to the proper officer.

Appeal.

SEC. 20. Appeals may be taken herein, as from other decisions of such board: *Provided*, the same be taken within ten days.

Effect of decision of circuit court.

SEC. 21. If, upon such appeal, the circuit court confirm such election, a certificate thereof shall issue; if such election be annulled, and no other person declared elected to the same office, it shall be declared vacant.

To what witness shall answer.

SEC. 22. Any witness who voted at such election, when called to testify in any such case, shall be required to answer touching his qualifications, and if he was not a qualified elector, he shall be required to answer for whom he did vote, and such admissions shall not be used against him in any prosecution for illegal voting.

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SEC. 23. The sheriff, clerk, and justices of the peace, for services rendered by them, in case of contested elections, shall receive from the party at whose instance such services are performed, the fees usually allowed for similar services in other cases. Costs.

CHAPTER 35.

AN ACT to provide for equalizeing the appraisement for taxation of the real property of the State of Indiana.

[APPROVED MAY 28, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That in each year in which the real property in this State shall be appraised for taxation, boards for equalizing the valuation of real property shall be constituted and organized for the State at large, and for each congressional district and each county in the State, in the manner specified in this act. State and district boards of equalization.

SEC. 2. The county auditor, the board of county commissioners, and the appraiser or appraisers in each county, shall meet on the first Monday in June of each year in which the real property in the State is appraised for taxation, and shall constitute a board for the equalization of the valuation of real property in such county. Such meeting shall be held at the seat of justice of such county, and the county auditor shall act as chairman of the board. Who shall constitute county board.

SEC. 3. Such county board of equalization shall diligently and carefully examine the returns made by the appraiser or appraisers of real property in the county; and it shall be the duty of such board to equalize such appraisement between the several townships in the county, so that the valuation of the real property shall conform to an equitable and uniform standard, reference being had to the productiveness of the lands, their proximity to cities or towns, the nearness of access to markets, and the average range of the prices of lands and their products. They shall equalize appraisement between townships.

SEC. 4. Such board shall not be confined to an equalization of values between the several townships; but whenever they shall become satisfied, either from the application of owners of land, who may be aggrieved by the appraisement, or by other means, that the valuation of lands within any township has been unequal and inequitable, they shall have power to equalize such valuation, in conformity to the provisions of the third section of this act. They may equalize appraisement in townships.

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County auditors to constitute district board;

SEC. 5. The auditors of the several counties in each congressional district in this State, shall meet at a central point in each district, as designated in this section, on Wednesday after the third Monday of June, next after the meeting of the county boards of equalization, mentioned in the preceding section, and shall constitute a district board of equalization; and shall, when so met, appoint a chairman to preside over their deliberations.

Where boards shall meet.

The district board for the first congressional district shall meet at the county seat of Pike county; the district board of the second congressional district shall meet at the county seat of Floyd county; the district board for the third congressional district shall meet at the county seat of Bartholomew county; the district board for the fourth congressional district shall meet at the county seat of Franklin county; the district board for the fifth congressional district shall meet at the county seat of Wayne county; the district board for the sixth congressional district shall meet at the county seat of Marion county; the district board for the seventh congressional district shall meet at the county seat of Clay county; the district board for the eighth congressional district shall meet at the county seat of Tippecanoe county; the district board for the ninth congressional district shall meet at the county seat of Fulton county; the district board for the tenth congressional district shall meet at the county seat of Noble county; and the district board for the eleventh congressional district shall meet at the county seat of Grant county.

Auditors to produce lists of assessment; board shall equalize district.

SEC. 6. Each county auditor shall produce to the district board of equalization his list of assessments, containing a list of the lands as appraised in his county, with the corrections made by the county board for equalizing the assessments of real property. The district board shall carefully and diligently examine and compare such lists; and it shall be their duty to equalize the valuation of the lands in such district, in conformity to the standards of value and regulations prescribed for the county boards of equalization.

Selection of delegate to State Board.

SEC. 7. Each of such district boards of equalization, shall select one of their own number as a delegate to a State Board of Equalization, and the certificate of appointment, signed by the chairman of such district board, shall entitle the person to whom it is given to take his seat as a member of the State Board of Equalization. The chairman of such district board shall certify to the State Board of Equalization the changes made by such district board in the valuation of the real property of the several counties in his district.

Auditor of State to be President; board to equalize between districts.

SEC. 8. A State Board of Equalization, to consist of the delegates from the district boards mentioned in the next preceding section, together with the Auditor of State, who shall be the president of the State Board, shall meet at Indianapolis on the first Monday in July next succeeding the meetings of the said district boards. Such State Board shall

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diligently and carefully examine and compare the valuations of real property as reported to them by the chairmen of the district boards, with the corrections and changes made therein by the district boards; and it shall be the duty of the said State Board of Equalization to equalize the appraisement of the lands in this State, between the several congressional districts, in conformity to the standards of value and other provisions herein prescribed in relation to the county and district boards of equalization.

Auditor of State to report changes to county auditors

SEC. 9. It shall be the duty of the Auditor of State, immediately after the adjournment of the State Board of Equalization, to report to the auditors of the several counties, the corrections and changes made by the State Board in the valuation of the real property of each county, respectively, with the per centage of increase or diminution to be added to or deducted from the valuation of the real property in such counties, respectively; and the several county auditors shall make the corresponding changes in their county lists.

Aggregate in no case to be decreased.

SEC. 10. Neither the county, district, nor State Boards of Equalization shall have power to reduce the aggregate valuation of the real property of the townships, counties and districts, as reported to them respectively; but the aggregates of such valuations may be increased, if in the opinion of either of said boards, such valuations shall, in any instance, have been assessed too low.

Compensation of members of the several boards.

SEC. 11. The members of the several county boards of equalization, herein provided for, shall each receive one dollar and fifty cents per day for every day's necessary attendance upon the meetings of such boards, to be paid out of the treasuries of their respective counties. The delegates to the district boards shall each receive two dollars and fifty cents per day, and the members of the State Board shall each receive three dollars per day for each and every day spent in discharge of their duties as members of such boards, including the time occupied in going to and returning from the meetings of such boards, to be certified by the chairmen of such boards, respectively, and paid out of the State Treasury on the warrant of the Auditor of State: *Provided*, that the district boards shall not remain in session, at any one time, more than six days, and the delegates forming the State Board shall not remain in session, at any one time, more than ten days.

Oath.

SEC. 12. The members of each and every of the boards of equalization provided for in this act, shall, before entering upon the discharge of the duties of such boards, severally take an oath or affirmation, to be administered by any officer authorized to administer oaths, for the faithful and impartial discharge of their duties as members of such boards, according to the best of their knowledge, skill and ability.

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Meetings for 1852.

SEC. 13. Boards of equalization, under the provisions of this act, shall meet during the present year for the purpose of equalizing the appraisement of real property in this State made in the year 1851; and their times and places of meeting, compensation, powers, duties and functions, shall be in all respects, conformable to the provisions of this act.

This act when to be in force.

SEC. 14. Whereas, in the opinion of this General Assembly, an emergency exists for the immediate taking effect of this act, it is therefore enacted that this act shall take effect and be in force from and after its passage and publication in the Indiana Sentinel, and Indiana Journal, and Indiana Statesman.

CHAPTER 36.

AN ACT regarding Estrays and articles adrift.

[APPROVED, JUNE 16, 1852.]

Notice of taking up.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any person who shall take up any estray horse, mule, ass, sheep, hog, cattle, or goat, or any other article of value adrift, shall, within five days thereafter, advertise the same in writing in three of the most public places in the township where such property is taken up, stating the time of taking up, and giving particular description.

Appraisement.

SEC. 2. If, within fifteen days after taking up, the owner shall not have claimed such estray property, the taker up shall report the same to some justice of the peace in the township, who shall issue his warrant to three householders of the neighborhood, not of kin to the taker up, (unless they cannot be otherwise procured,) directing any two of them to appraise such property, whose duty it shall be to appraise the same, and make report in writing to such justice, clearly describing the property, and their valuation thereof; and shall, under oath, declare that said appraisement and description were made without partiality, favor, or affection.

Taker up to make oath that marks, &c., have not been altered.

SEC. 3. The taker up shall, at the time of making such report, make oath before such justice, that the marks, brands or appearance of such property, have not been altered by him, nor by any other person to his knowledge, since the same became estray or adrift, other than may, in his written report, have been stated.

Animal over two years of age to be taken to pound.

SEC. 4. The taker up of any unclaimed estray horse, mule, or ass, above the age of two years, shall take the same to the pound of the proper county, (if there be one,) and

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keep the same therein from eleven o'clock, A. M., until three o'clock, P. M., of the first day of each of the two succeeding terms of the circuit court, after the taking up of such estray.

Copy of description, &c., to be transmitted to clerk.

SEC. 5. Any justice to whom estray property may have been reported, shall, within ten days, transmit to the clerk of the circuit court, a copy of the description and valuation thereof, together with the proper fee as hereinafter provided, and said clerk shall enter such description and appraisement in a book to be kept for that purpose.

Property exceeding in value $10 to be advertised.

SEC. 6. Estray property exceeding in value ten dollars, and property adrift exceeding in value ten dollars, shall be advertised in some newspaper of the county, if there be one, if not, in the paper in the State nearest thereto; and the clerk shall forward to the printer a copy of the register thereof, marked outside, "estray paper," together with a fee of one dollar, out of which the printer shall pay postage.

Property not worth over $12, &c., not claimed within 90 days, to vest in taker up.

SEC. 7. In all cases in which the provisions of this act shall have been complied with, property adrift not exceeding in value twelve dollars, unclaimed or unproven by the owner within ninety days after taking up, and other estray not exceeding in value ten dollars, and unclaimed or unproven by the owner within one year, after taking up, shall vest in the taker up.

Property exceeding in value $12, and animals worth over $10, not claimed within the time specified, to be reported, &c.

SEC. 8. Property taken up adrift, the appraised value of which exceeds twelve dollars, not claimed and proven within ninety days after taking up, or animals astray other than horses, mules, or asses, the appraised value of which exceeds ten dollars, not claimed and proven within six months after taking up, shall be reported by the taker up to some justice of the peace of the proper township within five days after the expiration of the time specified herein.

Such property to be sold, and proceedings therein.

SEC. 9. Such justice shall issue his warrant to some constable to sell the same at auction, giving ten days' notice in writing of the time and place of sale, describing the property to be sold; and such constable shall, within five days after such sale, return such order, and the proceeds of sale, to said justice, retaining one dollar for his services therein; and said justice shall immediately pay over to the county treasurer the proceeds of sale after deducting the proper amount to be paid to the taker up as provided in this act, and fifty cents for his own fee, and shall take from the treasurer duplicate receipts, one of which he shall file in the office of the clerk of the circuit court, and the other with the county auditor.

Property exceeding $20 in value not claimed within 12 months, to be given to sheriff and sold.

SEC. 10. Any horse, mule, or ass, taken up under the provisions of this act, the appraised value of which exceeds twenty dollars, and which shall remain unclaimed or unproven at the expiration of twelve months from the time of taking up, shall be by the taker up delivered to the sheriff of the proper county on the first day of the term of the circuit court next, after the expiration of such time, and shall be, by said sheriff,

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sold at public sale, and after retaining one dollar for his services, and paying to the taker up his charges, as provided in this act, said sheriff shall pay the proceeds of such sale to the treasurer of the county within five days thereafter, taking from the treasurer duplicate receipts, and filing one of the same in the clerk's office, and the other with the county auditor.

Estray fund.

SEC. 11. All sums paid to the county treasurer under the provisions of this act, shall be by him entered to the credit of the county, under the head of estray fund.

Compensation of taker up.

SEC. 12. The taker up shall be entitled, for taking up, for each horse, mule, or ass, one dollar; each head of neat cattle, fifty cents; each sheep, goat, or hog, above six months old, ten cents; but where the owner reclaims and proves his property before the same is posted, the taker up shall only be allowed half the above reward.

Same.

SEC. 13. The taker up of property a drift shall be allowed a reasonable sum, to be determined by some justice of the peace of the township; but either the claimant or the taker up thereof, may, if they choose have a jury to determine what amount shall be just and reasonable for taking up and taking care of such property; the justice, constable and jury shall be allowed the same fees as in other cases.

What fees to be paid by taker up.

SEC. 14. The taker up of property exceeding three dollars in value, shall pay to the justice at the time of reporting, fifty cents for the justice, fifty cents for the clerk, and one dollar for the printer, where printing is required, but if under three dollars, the justice shall make no return to the clerk, and his fee shall be twenty-five cents only.

Register of estrays.

SEC. 15. The clerk shall keep a register of estrays; where several estrays or articles adrift are taken up by one person, there shall be only one entry and one advertisement, one fee of the clerk, and one of the justice.

Compensation of taker up for keeping property.

SEC. 16. Upon property sold or reclaimed, the taker up shall be allowed such compensation for keeping such property as shall be, by the justice before whom the proper proceedings are had, deemed just and reasonable, and such taker up shall keep account of the time any estray animal is kept by him, and make oath to the same.

When the animal is worked.

SEC. 17. If any animal is taken up under the provisions of this act, and worked by the taker up, a reasonable compensation shall be allowed for the services of said animal, to be deducted from the keeping; the taker up if required shall verify under oath the time he has worked said animal.

Owner may have property before sale by proving it.

SEC. 18. At any time before sale the owner may have his property by proving the same before the justice of the township where taken up, and paying charges. And at any time within two years after sale, but not later, he may reclaim the money paid into the treasury, by proper proof before the county auditor.

Property not to be taken up between the 1st of April and Nov.

SEC. 19. No person shall take up any horse or stock except at his place of residence, or drive the same out of the

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woods and take them up; nor shall any animal be taken up between the first day of April and the first day of November, unless the same be found in the enclosure of the taker up: *Provided, however*, That when any animal may be in the act of escaping from the owner, it may be taken up at any time, wherever found. Proviso.

Property not to be taken out of the county.

SEC. 20. The taker up, until he become owner, shall not take or suffer to be taken out of the county any property taken up, for more than three days at any one time.

Fatted hogs may be killed.

SEC. 21. Fatted hogs taken up may, at the option of the taker up, be killed one month after posting; but, in that case, the taker up shall forthwith, after killing the same, pay their appraised value, deducting costs and charges (to be liquidated as in other cases) to the county treasurer for the use of the owner.

Stock hogs.

SEC. 22. Stock hogs taken up may, at the option of the taker up, be by him paid for six months after posting, at their appraised value, deducting costs and reward for taking up, but no allowance for keeping the same.

Articles adrift.

SEC. 23. Whenever upon any navigable waters within, or bordering on the State, the cargo which may have been shipped as freight, or the baggage of passengers, or part thereof, of any vessel may be cast adrift, afloat, or ashore, by any wreck, accident or mischance of such vessel, such cargo, or part thereof, as may have been taken up and secured by any person, may be reclaimed by the captain, clerk, or officer navigating such vessel, the supercargo, owner, or agent of the owner of such cargo or baggage, who may be the claimant thereof.

Property to be given up on proof, &c.

SEC. 24. Such property shall be surrendered to such claimant upon proof or circumstance satisfactory to the taker of the property of the right of such claimant, having a general or special property, agency or control therein, upon the payment by such claimant of reasonable compensation for service or expenses in the taking and preserving such property.

Upon refusal to deliver up, owner may sue for recovery.

SEC. 25. Should such person, or the person having possession of the property refuse to restore it to the claimant, or claim unreasonable compensation for the services and expenses in its taking up and preservation, the claimant may have a summary proceeding before any disinterested justice of the peace for the recovery of such property.

Affidavit to be filed, and a summons issued.

SEC. 26. The claimant must file before the justice, an affidavit of the facts attending the wreck, or accident enumerating as nearly as possible the articles or packages withheld, his right to receive the same, and thereupon the justice shall summon the person taking up, or in possession of such property to appear before him at a place and at the earliest practicable period not more than three days, to be designated in the writ.

Trial.

SEC. 27. Such justice shall hear and determine the matters in controversy, in the most speedy manner practicable,

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as other proceedings are had before him, and may fix the amount of compensation, to be paid by such claimant, and award a writ, or writs, for the delivery of the same forthwith to such claimant upon payment of such compensation.

Rules of procedure.

SEC. 28. Such trial shall be governed by the usual rules of procedure before justices except as to continuances, and appeals may be taken by either party upon the same terms, and under the same regulations as appeals in other cases are taken.

Exception.

SEC. 29. The provisions of the sections of this chapter prior to section twenty-three, relative to articles adrift, shall not apply to the cases contemplated in said section twenty-three.

Notice to be given if property is not claimed within seven days.

SEC. 30. If any of the property referred to in section twenty-three, be not claimed within seven days after the same has been taken up, then the taker up of such property shall advertise the same as required in other cases of articles adrift.

CHAPTER 37.

AN ACT regulating the Fees of Officers.

[APPROVED JUNE 16, 1852.]

Who shall receive fees.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the persons and officers herein mentioned, shall be entitled to receive for their services the fees herein allowed, and no others, except otherwise provided by law.

Clerk's Fees in the Supreme Court.

Clerk's fees in the supreme court.

Every writ or process and seal,	$1 00
Every process or summons, not sealed,	50
Endorsing on writ of error, or summons under writ of error, that it is to operate as a supersedeas,	5
Filing each paper in a case,	5
Copy of a record, or other paper, per sheet of one hundred words, or if the whole number of words in such copy be less than one hundred,	
Discontinuance or retraxit,	
Bringing a particular record into court,	
Entering satisfaction of record,	
Receiving and entering verdict,	
Entering defendant's appearance,	
Entering on docket,	

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Entering judgment,	$0 20
Swearing each witness, constable or bailiff,	5
Making up and entering a complete record, after judgment, per sheet of one hundred words,	10
Searching the record, within one year,	10
Every year back,	5
On confession of error, judgment or default,	25
Continuing cause,	20
Every issue joined,	25
Entering any principal motion,	10
Certificate and seal,	50
Every bond,	50
Making out advertisement for non-resident defendant,	50
Every hundred words contained in any writing, required by law to be done by him, and for which there is no specific allowance,	10
For recording deeds or other writings, when required, per one hundred words,	10
Indorsing on supersedeas or writ of error, direction to the clerk of the inferior court,	25
Docketing judgment,	15
Taking bail for stay of execution,	25
Issuing fee-bill for fees not his own,	50

For services not specifically provided for in this act, such clerk shall be entitled to the same fees as are by law allowed for similar services.

Clerk's Fees in the Circuit and Common Pleas Courts.

Clerk's fees in the circuit and common pleas courts.

For every writ, summons, or other process,	50
Entering action,	5
Filing complaint, or other pleading, or paper,	5
Copy of complaint or other pleading, when required, or of any order, rule, record or other paper, per sheet of one hundred words, or if the whole number of words be less than one hundred words,	10
Entering any motion and rule thereon,	10
Discontinuance or retraxit,	10
Bringing a particular record into court,	10
Entering satisfaction of record,	10
Receiving and entering verdict,	10
Entering judgment,	20
Transcript of record, and returning it with the writ, per sheet of 100 words,	10
Entering defendant's appearance,	5
Every writ of inquiry, per sheet of one hundred words,	10
Entering on docket,	15
Receiving and entering the petit panel and swearing the jury,	10

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Entering fees, excepting his own, on fee docket, per one hundred words,	$0 10
Swearing each witness, constable or bailiff,	5
Making up and entering a complete record after judgment, per one hundred words,	10
Searching the record, within one year,	10
Every year back,	5
Entering report of referees, per one hundred words,	10
Entering rule of court and appointing referees,	20
Entering every special continuance of a cause,	15
On the surrender of a principal in court by sureties,	15
Entering each principal motion,	10
Every issue joined,	25
On drawing special list of jury attending, striking and making copies of jury list for plaintiff or defendant,	50
Making out advertisement for a non-resident defendant, or on libel for divorce,	50
For a marriage license, and recording certificate of marriage,	1 00
Recording certificate of an estray, and advertising same,	50
Writ of ad quod damnum,	1 00
Taking bail for stay of execution,	25
Copy of a judgment to operate as a lien on real estate in another county,	50
Issuing fee-bill for fees other than his own,	50
Filing and recording transcript as a lien on real estate,	50
For every one hundred words of the record transcribed in a writ of venditioni exponas or scire facias,	10
Entering a writ of error or certiorari from the supreme court,	10
Making examination, registering, and certifying to each negro or mulatto, as required by law, to be paid out of the county treasury, for each,	25
Each certificate to a person desirous of borrowing school funds, as required by the school law, to be paid by such person,	25
Writing an affidavit and swearing affiant thereto,	25
Certificate and seal,	50
Reading and entering each order,	10
Every other writing required by law, for which there is no specific allowance, per every one hundred words,	10

For all services not specifically provided for in this act, except in relation to estates, the clerk shall be allowed the same fees as are by law allowed him for similar services.

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Clerks' fees in Criminal Proceedings.

Clerk's fees in criminal proceedings.

For taking a recognizance and drawing it up in form,	$0 40
Every writ or other process,	50
Entering defendant's appearance,	5
Making up record, per sheet of one hundred words,	10
Copy of record, when required, per sheet of one hundred words,	10
Every order or rule of court,	10
Filing record,	10
Entering the panel and swearing the jury,	25
Swearing each witness, constable or bailiff,	5
Taking and entering verdict,	10
Entering defendant's confession,	20
Copies of indictments and pleadings, if required, per one hundred words,	10
Discharging a recognizance	10

For service in criminal cases, not specifically provided for, the same fees as are allowed for similar services in civil cases.

Clerks' fees in relation to Estates.

Clerk's fees in relation to estates.

For all copies, per one hundred words,	10
Administering an oath,	5
Filing a paper, other than a voucher for the payment of money,	5
For filing all vouchers for money paid each,	2
For a citation,	50
For a letter of administration, and recording and filing the same,	1 00
Proving a will and endorsing certificate thereon	1 00
Qualifying administrator, taking bond, and writing certificate,	1 00
Proving codicil, if proved separately, endorsing certificate, recording and filing the same	1 00
Recording inventory or account, per one hundred words,	10
Giving notice by order of court for sale of land, for every advertisement, not exceeding three,	25
Entering up an order for the appraisers of decedent's estate,	10
Recording will, per one hundred words,	10
Rendering account of money received and paid out for each estate, each time,	25
Rendering each final settlement account,	50
Writing affidavit and swearing affiant,	10
Making up records and entries not herein provided for, for each one hundred words,	10

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Sheriffs' Fees.

Sheriff's fees.

For serving a writ and taking into custody,	$0 50
For every mile traveled in going and returning to serve process,	6
Taking bail,	25
Taking a recognizance and drawing it up in form,	50
Returning every writ,	10
Summoning a jury (with mileage as above)	75
Executing writ of possession,	1 00
Calling a jury in each cause,	10
For every person committed to jail,	50
Discharging every person out of jail,	40
Holding an inquisition, drawing up and returning the same,	1 50
Serving a summons,	30
Attending a prisoner before a judge when surrendered by his bail, and receiving the prisoner into custody,	50
Boarding each prisoner, per day,	30

Selling property on execution, a commission of five per centum on the first three hundred dollars, and two per centum on any excess above that amount; but when the money is paid to him without sale, one-half commissions only shall be allowed.

Taking a valuation of lands,	75
Taking a replevin bond,	75
Serving a capias ad satisfaciendum,	1 00
Levying on property and advertising the same without sale,	1 00

Mileage as above when no money is made, and no other fee or reward shall be allowed on executions, except for the expense of keeping property.

Making a deed on sale of real estate on execution,	2 00
Serving a writ of attachment,	50
Returning writ of attachment,	25

Sheriffs shall not be entitled to any fees for services performed by their bailiffs when such bailiffs are receiving pay by the day from the county at the time such services are rendered.

For postage paid on letters received from, or directed to the clerk of the supreme court enclosing process issued by said court, the amount thereof to be returned as an item of charge.

Clerk or sheriff not to receive extra allowance where amount of fees exceeds $1,000 per annum.

SEC. 2. Clerks or sheriffs, whose fees exceed one thousand dollars per annum, shall not be entitled to any extra allowance out of the county treasury, and the county board shall, before making any extra allowance to either a clerk or sheriff, require such officer to make oath to the amount of his fees for the year, for which such allowance is sought to be made.

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In criminal cases not provided for, the like fees as for services in civil cases. Other fees of sheriff.

For collecting fee bill, six per centum on the amount thereof.

For taking a convict to the State's prison, and all expenses incident to the same, per mile, to be paid out of the State Treasury,..... $0 25

For each additional convict taken at the same time, per mile,..... 10

For taking a prisoner to another county, such fee as the board doing county business, in the county whence the prisoner was taken, may in their discretion allow, out of the funds of said county.

For each commitment and discharge for a prisoner under any city authority,..... 20

Fees of the Secretary of State.

For recording each bond..... 25 Fees of Secretary of State.

For all copies of records, laws, and papers, per one hundred words,..... 10

For each certificate and seal,..... 50

Such fees to be paid by the per sons for whom the services are rendered: *Provided however*, such secretary shall in no case be entitled to any fee as above provided, except when the services rendered are for a private person, and not for the State, or any county, or officer of either, except notaries public.

For issuing commission to a notary public, and recording his bond, &c.,..... 75

Recorder's Fees.

For recording deeds and mortgages and the acknowledgment thereof, for the first hundred or less words, $0 50 Recorder's fees.

Each additional hundred words,..... 10

For certificate not under seal of acknowledgment of deeds and mortgages,..... 25

For certificate and seal,..... 50

For recording all other instruments and giving certified copies of any record, for each one hundred words,.. 10

For recording town plats for first one hundred lots or under,..... 2 00

Each additional lot,..... 1

County Auditor's Fees.

For all records, copies and other writing, for each one hundred words, (counting three figures for one word,) 10 County auditor's fees.

Filing each paper,..... 5

Each county order,..... 5

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Tax certificate,	$0 25
Each record of an agreement,	25
Each acknowledgment of a deed, to be paid by the person for whom the service is rendered,	25
Assignment of tax certificate and recording the same,	25
Making copy of tax duplicate, for each one hundred words, (counting three figures as one word,)	8
Administering an oath,	5
Each tax deed, to be paid by the person receiving such deed,	1 00
Each special constable's bond, oath and registration of same, to be paid by such constable,	1 00
Each certificate and seal, to be paid by the person requesting the same,	50
Each mortgage to secure a loan of school fund, to be paid by the mortgagor,	50
For each tract or parcel of land sold for taxes,	10
Writing any affidavit, necessarily connected with the business of his office, and swearing affiant thereto,	25
Each merchant's or other license,	50
Each road tax list,	25
Registering receipt given by the treasurer for money	5
Each bond taken in the discharge of his official duties,	30
Each quietus for land redeemed, to be paid by the person redeeming,	20
Each quietus for a treasurer's receipt,	5
Each writ, notice, or process required to be under seal,	50
If same be not under seal,	25
Each day engaged in the county board of equalization,	1 50

In trials before the board of county commissioners, the auditor shall be entitled to the same fees as are allowed clerks of the circuit court for similar services, where no specific fee is fixed in this act, which shall be paid by the county, or other person, as the right of the case may be, as such board or court may order. *Provided, however*, county auditors shall not be entitled to receive any allowances, nor fees, out of the county treasury for his services for such county for any one year, exceeding the amount of eight hundred dollars.

Proviso.

County Treasurer's Fees.

County treasurer's fees.

For collecting taxes shall be,

Eight per cent. on the first one thousand dollars.

Seven per cent. on the amount between one and two thousand dollars.

Six per cent. on the amount between two and three thousand dollars.

Five per cent. on the amount between three and four thousand dollars.

Four per cent. on the amount between four and five thousand dollars.

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Three per cent. on all sums over five thousand dollars.

Two and one-half per cent. for securing and paying out all other moneys other than tax and school fund.

For every mile travelled in going and returning to make settlements with the Treasurer and Auditor of State, and to make deposits of State revenue under the instructions of such treasurer and auditor,.... $0 08

For each tract or parcel of land sold for taxes,..... 10

Provided, hovever, county treasurers shall not receive any allowances nor per cent. out of the county treasury for his services as such treasurer, exceeding in amount, in any one year, the sum of one thousand dollars. *Provided further*, that the treasurer shall not be entitled to charge or receive any per centage or commision for receiving and paying over certificates or receipts for taxes or work done on roads and highways. Proviso.

County Commissioners' Fees.

County commissioner's fees.

For each day's attendance as a member of the county board, or of the board of equalization, each commissioner shall receive,..... $3 00

County Surveyor's Fees.

County survey or's fees.

For every corner by him located or perpetuated,....	1 00
For every line run in dividing and running up sections or parts of sections, per mile,.....	1 00
Where more than four corners are to be perpetuated in the same section, for each additional corner, only,.....	50
For going to and returning from a review, per mile,.	5
Attending court, per day,.....	1 25
Surveying a town lot, ...	1 00
Every additional lot surveyed at one time,.....	25
Running a division line one mile or under,.....	1 00
Surveying an acre of land or under,.....	1 50
Services in locating roads by authority of law,per day,	2 50
Copy of a plat of land or certificate of survey,.....	25
Making out a complete report of the survey made of any road, including field notes, &c.,.....	50
If such survey exceeds five miles,.....	1 00
In all surveys made by authority of the board of county commissioners or township trustees, chainbearers and axmen shall receive, per day,.....	1 00

Prosecuting Attorney's Fees.

Prosecuting attorney's fees.

Docket fee in court of common pleas on a plea of guilty, ...	2 00
Docket fee before justice of the peace,.....	2 50

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Docket fee in divorce cases,	$5 00
Docket fee upon forfeited recognizances, when he prosecutes to final judgment against the defendants,	5 00
Docket fees in all cases of final payment [judgment] in favor of the State on forfeited recognizances,	5 00
Docket fee in cases in circuit court, on plea of guilty,	2 50
Docket fee in cases in circuit court on plea of not guilty,	5 00
Docket fee in cases in court of common pleas, on plea of not guilty,	4 00
In all other cases not specified, when the prosecuting attorney is required to prosecute or defend, the fee shall be, in the circuit court and in the court of common pleas,	5 00

Constable's Fees in Civil Cases.

Constable's fees in civil cases.

For serving a summons or warrant on each person named therein,	25
Travelling to serve process or subpœna, or other writ, per mile,	6

Where two or more are named in such process, mileage shall be allowed for the distance necessarily travelled.

A copy of the process left at the defendant's residence,	25
Serving a subpœna, for each person therein named,	20
Returning each writ,	5
Bail bond,	25
Serving execution and mileage as above,	25
Commitment to prison,	25
Sale of goods, when the amount does not exceed six dollars,	25

On all sums above six dollars, five per centum.

On all moneys collected on execution without sale, to such constable half the above commissions.

Returning execution,	10
Summoning a jury in any case,	25
Attending a jury trial before a justice,	25
Posting up advertisement of sale,	15

Constable's Fees in Criminal Cases.

Constable's fees in criminal cases.

For serving a warrant on each person named therein,	50
Serving a subpœna,	20
Travelling to serve any process, per mile,	6
Attending an examination or trial of a person charged with a crime or misdemeanor,	25
If more than one, an addition for each of	10
Commitment of each person,	25
And for each mile necessarily travelled,	5

For services not herein enumerated, the same fees as in civil cases.

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Fees of the Justice's of the Peace.

Fees of justice of the peace.

For each summons or capias,	$0 25
Every examination on a criminal information on oath,	50
Swearing each witness,	5
Every warrant in a criminal case,	25
Every trial on complaint for unlawful detention of lands or tenements,	1 00
Issuing every attachment for contempt,	25
Taking an acknowledgment of a deed or a power of attorney,	25
Order for relieving a pauper,	25
Order for removing a pauper,	50
Certifying description of a boat adrift or estray,	25
Warrant and certificate of appraisement,	25
Taking and certifying depositions,	25
And for each hundred words therein contained more than one hundred,	10
For each process required by law, and not herein enumerated,	20
For every writing or record not herein provided for, every one hundred words,	10
Every trial,	25
For certifying copies of all proceedings, per each one hundred words,	10
Entering continuance,	10
Every bond or recognizance,	25
Every venire for summoning jury,	25
Each transfer of judgment,	10
Issuing execution,	25
Subpœna for witnesses, to include all that are called for at one time,	25
Administering each oath required by law and not herein enumerated,	5
Trial of right of property, and judgment,	50
Swearing jury,	10
Making up docket, for every one hundred words,	10
Each writ of attachment against property,	50
Making return of fines to court, for each mile necessarily traveled, to be paid by the county,	5
Transmitting papers in cases of appeal,	25
Writing an affidavit,	10

Jurors' Fees.

Juror's fees.

Every juror shall receive, in the circuit court or court of common pleas, to be paid out of the county treasury, per day,	1 25
Every grand juror sworn, for his services as such, to be paid by the county, per day,	1 25

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Every such grand or petit juror, for each mile traveled, in going to and returning from court, shall receive, to be paid by the county,..... $0 4

Every juror for attending a trial per day before a justice of the peace, to be taxed with the costs of suit,..... 50

Every juror sworn, in each action in the supreme court, to be taxed against the party failing in the suit,..... 1 50

For every mile actually traveled in going to and returning from court,..... 5

Witness Fees in the Supreme and Circuit Courts, and Court of Common Pleas.

Witnesses' fees in the supreme, cir. and com. pleas courts.

To every witness attending in his own county on trial, per day,..... 75

To every witness attending from another county, each day,..... 1 00

To each witness subpœnaed in the county, and detained from another county, each day,..... 1 00

For every mile necessarily traveled in going to and returning from court from his place of residence, each witness shall receive..... 4

Witness Fees before a Justice.

Witnesses' fees before a justice.

Attending, per day,..... 50

Witnesses shall claim their fees on the day of trial, before the judgment docket is signed by the justice.

Fees of Notaries Public and Commissioners.

Fees of notaries public and commissioners.

For each certificate and seal,..... 50

Taking depositions or other writing, for each one hundred words,..... 10

Administering an oath,..... 10

For each protest,..... 50

Each notice thereof,..... 25

When required, for each one hundred words, in recording or copying such protest,..... 10

Taking acknowledgment of deeds, mortgages, powers of attorney, or other written instruments,.... 25

Coroner's Fees.

Coroner's fees.

Empanelling and swearing a jury and witnesses, and making and returning inquisition, for the view of each body,..... 5 00

Township Trustees', Clerks', and Treasurers' Fees.

Township trustees', clerks', and treasurers' fees.

For each day's service shall each be allowed, to be paid out of the township fund,..... 1 00

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Allowance to jurors empanneled by coroner.

SEC. 3. In all cases, hereafter, when jurors are empannelled by any coroner for the purpose of holding an inquest, each juror shall be entitled to fifty cents for each day he shall serve as such, to be certified by the coroner.

Fees of inquests, how paid.

SEC. 4. All fees of inquests shall be paid out of the property of the deceased person, if there be so much belonging to such decedent; if not, then out of the county treasury.

Clerks of supreme, circuit, and com. pleas courts shall post up table of fees.

SEC. 5. The clerks of the supreme and circuit courts and court of common pleas shall post up in some conspicuous place in their offices, and there keep, a table of their fees; and, on failure so to do, shall have no right to demand or receive any fees for services rendered by them, as such clerks, during the time such tables are not so posted up.

No fees in case of acquittal in criminal prosecutions.

SEC. 6. In all criminal prosecutions, where the person accused shall be acquitted, no costs or fees shall be charged against such person, nor against the State or county, for any services rendered in such prosecution by any clerk, sheriff, coroner, justice of the peace, constable or witness; but in all cases of conviction, such fees and costs shall be taxed and collected as in other cases, from the person convicted.

Fees, when and how to be claimed.

SEC. 7. Witnesses shall claim their fees at each term as they attend, and not afterwards; and the clerks shall note such fees at the time they are claimed; and the sheriffs and coroners are hereby required to endorse upon all process served by them, their fees, at full length; and all clerks shall, in a book to be kept for that purpose, enter all the fees, as the services are rendered, and the clerk of the supreme, or of any circuit or common pleas court shall have power to issue fee-bills from the book aforesaid, and the papers on file in his office, for services rendered by any person in said court before the expiration of his official term.

Clerk to issue fee bills.

Fee bill not actionable.

SEC. 8. No action shall be maintained on any fee-bill due to any person, so long as the party owing shall reside within the jurisdiction of the court issuing the same.

Questions concerning bills of costs, how determined.

SEC. 9. Each circuit court, or court of common pleas, or a judge thereof in vacation, or a justice of the peace, as the case may be, if a question arise concerning any bill of costs, or if the person charged therewith shall allege payment thereof, shall upon motion of any party interested therein, and reasonable notice thereof, determine, according to the rights of the parties thereto, and make order accordingly; and whenever there shall appear a claim for official services rendered by any officer of a court of justice and there does not appear to be any fee fixed by law as a compensation therefor, the court, judge or justice, on application, shall make order specifically fixing the allowance for such claim.

Fee bills, when to issue for fees due over five years.

SEC. 10. After five years from the termination of any suit in which services have been rendered, no fee bill shall issue for such services until the party claiming the same shall give five days' notice in writing to the party charged, to ap-

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pear before the court in which the fees accrued, or the judge thereof in vacation, or a master in chancery, or a justice of the peace as the case may be, and show cause against the issuing thereof, and then if no sufficient cause be shown the court, judge, master in chancery or justice of the peace, as the case may be, shall order the said fee bill to issue.

County board to furnish books, offices, &c., to county officers.

SEC. 11. The board of county commissioners shall furnish the necessary record books and stationery for the offices of the auditor, treasurer, and recorder, and the clerk of the circuit and common pleas courts, of their respective counties, at the expense of such county, and shall also provide safe and suitable offices for such officers.

Secretary, Auditor and Treasurer of State to furnish books, offices, &c.

SEC. 12. The Secretary, Auditor and Treasurer of State shall furnish, at the expense of the State, the necessary record books and office rent and stationery for the offices of the Secretary, Auditor, and Treasurer of State, and clerk of the supreme court, and fuel and stationery for the use of the General Assembly.

CHAPTER 38.

AN ACT concerning enclosures, trespassing animals, and partition fences.

[APPROVED JUNE 4, 1852.]

What deemed a lawful fence.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any structure or hedge, or ditch, in the nature of a fence, used for purposes of enclosure, which is such as good husbandmen generally keep, and as shall on the testimony of skilful men, appear to be sufficient, shall be deemed a lawful fence.

Animals breaking over.

SEC. 2. If any domestic animal break into an enclosure, the person injured thereby shall recover the amount of damage done, if it shall appear that the fence through which said animal broke was lawful; but not otherwise.*

If before trial owner tenders costs and damages, plaintiff not to recover costs.

SEC. 3. If, before trial, the owner of such trespassing animal shall have tendered to the person injured, any costs which may have accrued, and also an amount in lieu of damage, which shall equal or exceed the amount of damages afterwards awarded by the court or by a jury; or shall offer, in writing, to confess judgment for the same; and if, notwithstanding, the said injured person, refusing the said offer, cause the trial to proceed, he shall pay costs, and recover only the damages awarded.

*A person who chases a horse out of his field with a large, fierce dog, commits an unlawful act, and is liable for any injury to the horse which the act occasions.—*Amick* vs *O'Hara*, 6 Blackf., 258.

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Animals breaking over, may be taken up as estrays.

SEC. 4. When any domestic animal shall break into the enclosure of any person, such person, without regard to the season of the year, may take up such animal as if an estray, whether the owner be known to him or not, and shall proceed as provided by law of estrays, except as herein provided.

Notice.

SEC. 5. Such taker up shall, within twenty-four hours after such taking up, give notice to the owner of such animal, if known, and he can be immediately found.

Assessment of damages.

SEC. 6. Such taker up, before posting or advertising, shall procure, from two disinterested freeholders, an examination and assessment of damages, with a certificate of same, including reasonable pay for such assessment.

Damages, &c., to be specified in notice.

SEC. 7. The fact of trespass in the enclosure of the taker up and the damages assessed, including pay for assessing, shall be specified in such notice or advertisement.

Owner to prove property, pay costs and damages, &c.

SEC. 8. The owner shall not be entitled to demand the trespassing estray from such taker up, unless he proceed, as in case of estrays, to prove his property and pay costs allowed in the case of estrays, and also damages and the costs of assessment.

Owner may have trial before expiration of 5 days, &c.

SEC. 9. If the owner of the estray, at any time within five days after he has had notice of assessment of damages, controvert, before any justice of the township, the amount of damages, or deny such trespass, the cause shall be docketed for trial.

Jury—judgment—execution.

SEC. 10. Either party may demand a jury; and such trial shall proceed, and judgment be rendered and execution issue as in other cases.

Damages.

SEC. 11. If damages be assessed on such trial, such damages and all costs must be paid by the owner before he recover his property.

Judgment vs. the taker up.

SEC. 12. If the verdict, or finding be, that the trespass was not committed by the property taken up, judgment shall go against the taker up for all costs and for such damages as may be assessed.

Taker up may retain damages.

SEC. 13. When a trespassing estray is sold, the taker up, in addition to the usual costs and allowances in the case of estrays, may retain out of the value of such estray, the damages sustained by such trespass and the costs of their assessment.

If the fence is unlawful, animal shall be released, &c.

SEC. 14. In case of trespassing animal taken up, if the court or jury find the fence not lawful, the animal shall be released; and the occupant of the enclosure shall pay costs and damages.

Partition fences.

SEC. 15. Except when otherwise specially agreed, partition fences, dividing lands occupied on both sides, shall be maintained throughout the year, equally by both parties.

Notice.

SEC. 16. If either party fail so to do, the other may give him notice of three days, that he will call upon two disinterested freeholders, at a specified hour, on a day fixed, to

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examine said fence, and if they deem it insufficient, to assess the amount required to make it sufficient.

After 15 days party may repair fences, and recover amount of the one failing.

SEC. 17. If within fifteen days thereafter, the party to whom notice has been given, shall not repair said fence, the complainant may do so; and in that case, he shall have his action against the other for the amount so assessed, with ten per cent. damages thereon.

Trial.

SEC. 18. Upon such trial, the defendant may impeach such assessment; and in that case, the court, or the jury, as the case may be, shall determine the damages.

Defendant may tender amount.

SEC. 19. If before trial the defendant shall tender to the plaintiff the costs of assessment, and an amount which equals or exceeds the damages which shall afterwards be awarded, the plaintiff shall pay costs and recover only the damages awarded.

Case in which an owner is to pay half of partition fences.

SEC. 20. When, by enclosure of unenclosed land, a fence already erected shall become a partition fence, the person making such enclosure shall pay to the owner of the fence the value of one half of the same, as estimated by the owner.

Trial—tender—costs.

SEC. 21. If he refuse, the owner may bring suit for the same. But if the person making the enclosure shall have tendered to him before trial, an amount equal to, or larger than the damages awarded, together with costs accrued up to the date of tender, the owner of the fence shall pay costs, and have only the damages assessed.

Lines.

SEC. 22. No person enclosing land that has heretofore lain open shall join his fence to that of another, except by consent. If no consent be given, each shall give one half the width of a lane, or a reasonable distance for the erection of a second fence.

Party ceasing to use the land, not to take fence away if the owner will pay for it.

SEC. 23. When any party shall cease to use his land, or shall lay open his enclosure, he shall not take away any part of the fence which forms a partition fence between him and the enclosure of any other person, if the owner or occupant will pay to such party the reasonable value of such partition fence.

Fences upon the land of another by mistake, may be removed.

SEC. 24. When any person shall, by mistake, erect any fence on the land of another, and when, by a line legally determined, that fact is ascertained, such person may enter upon such premises and remove the fence which he may have made thereon, within six months after such line has been run as aforesaid, upon his first paying, or offering to pay, to the other party reasonable damages for injury in passing over the soil in making such removal.

Not to expose crop.

SEC. 25. When the fence to be removed forms any part of a fence enclosing a field of the other party, with a crop thereon, such first person shall not remove the same, so as to expose such field, until such crop shall have been gathered and removed or secured from injury, or might with reasonable diligence so have been gathered and secured; then he may immediately remove such fence and materials, although more than six months have elapsed since such division line was run.

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CHAPTER 39.

AN ACT to establish and regulate Ferries.

[APPROVED JUNE 17, 1852.]

Proceedings to establish a ferry.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any owner of land on any creek or river may have a public ferry established across such creek or river on application to the board of commissioners of the proper county, on satisfactory proof of his having set up written notices in three of the most public places in the county, thirty days before the meeting of such board, but no ferry shall be established within one mile below or above an established ferry, unless where public convenience requires it.*

When the river or creek is the boundary line between two counties.

SEC. 2. When any river or creek shall be the boundary line between two counties, any person holding lands on either side of said river or creek shall wish to have a public ferry across the same, he shall apply to the board of county commissioners for the county in which his lands lie, who are hereby authorized to establish such ferry, from the land of such applicant to the opposite side, and in such case a certified copy of the order establishing such ferry shall be transmitted to the auditor of the county on such opposite side at the expense of such applicant; and thereupon each county assess a tax upon such ferry as in other cases. Nothing in this act shall be so construed as to make any person liable for crossing his own property or that of any other, unless he receives pay for the same.

Not liable for crossing his own property, without pay.

After three months' notice, if the owner fails, board may license any one else applying.

SEC. 3. If the owner of any land, lying on any creek or river, where any road may cross, and public convenience requires a ferry, shall fail to have one established within a reasonable time, after three months' notice in a public newspaper of the county, or by written notices set up in three of the most public places therein, the proper board of county commissioners may grant license to any person applying, to keep a ferry at that place, who may occupy as much ground, not exceeding one hundred rods on each side, as is necessary to discharge passengers.

Viewers to be appointed to assess damages.

SEC. 4. But before such ferry shall be established, as provided for in the preceding section, such board shall appoint three disinterested persons to view the premises in question, and assess such damages as the owner of such land may sustain by reason of the establishment of such ferry thereon, which assessment shall be returned and filed in the proper auditor's office, and upon the amount of such assessment being tendered the owner, or deposited in such auditor's office, such ferry may be established, and if the amount of such as-

*The petitioner for a ferry must produce some other evidence of title to land on which the ferry is prayed to be established, than the mere fact of his being in possession.—*Mullis* vs. *Cavins*, 5 Blackf. 77.

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sessment be deposited in such office, the auditor shall give notice thereof to the owner.

Owner may take possession of ferry on tendering value of boats, &c.

SEC. 5. The owner of the land where such ferry may have been established may take possession thereof, on tendering the holder the full value of all the boats and other craft which may have been necessarily employed for the transportation of passengers and property, with all other expenses that may have accrued in improving the ferry, and ten per centum thereon, giving also to the board of county commissioners a bond, with security, as hereinafter prescribed; which bond shall be a complete release of the obligations contained in the bond previously given by the holder of the ferry.

Board may direct as to number of boats, hands, &c.

SEC. 6. The board of county commissioners shall have authority to order and direct, from time to time, the number and description of boats, and the number of hands which shall be kept at each ferry respectively.

Bond.

SEC. 7. Before the issuing of license to any person to keep a ferry, he shall execute to the State of Indiana, a bond in the penal sum of five hundred dollars, with surety to the acceptance of the county auditor, conditioned for the keeping such ferry according to law, which bond shall be filed in the auditor's office.

Duties of ferry keepers.

SEC. 8. Each licensed ferry keeper shall constantly keep a sufficient number of boats, if more than one be required by the board of commissioners, and give due attendance to the transportation of all persons, with their property, who shall apply for the same, between daylight in the morning and dark in the evening, and at any hour of the night if required, except in cases of evident danger, to all other persons requiring the same, on their tendering double the rate of ferriage allowed to be taken in the day time, and such board may require such ferry keepers, to keep such ferry open till midnight.

Banks of stream to be kept in passable condition.

SEC. 9. It shall be the duty of all ferry keepers within this State to cause the banks of the river or creek to be dug sufficiently low, and kept in good passable order for the passage of man and horse, wagons and other vehicles; and such ferry keepers, and persons employed in attendance at such ferry, shall not be compelled to serve on juries or perform military duty.

Ferry keepers exempt from jury and military duty.

Rates of ferriage.

SEC. 10. The rates of ferriage shall be fixed by the board of county commissioners, at the time of licensing the ferry, and from time to time thereafter, as they shall think proper.

Proceedings to vacate a ferry.

SEC. 11. If any ferry shall not be furnished with the necessary boats and ferrymen within six months after the establishment thereof, or if the proprietor shall wilfully neglect to attend to the same, or shall fail to comply with any of the requirements of the proper board of commissioners, such board on complaint to them, shall cause the proprietor of such ferry to be summoned, to show cause at the next

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meeting of the board, why such ferry shall not be discontinued, and such board shall vacate such ferry, or dismiss such complaint, according to the testimony adduced, and may award costs against the complainant, if such complaint is dismissed, or against the proprietor, if the ferry be vacated.

Appeal.

SEC. 12. If any person is aggrieved by the establishment or vacation of a public ferry, he shall have the right to appeal to the circuit court of the proper county upon filing bond within thirty days thereafter, payable to the treasurer of the county, with security to be approved by the county auditor, and conditioned for the due prosecution of such appeal, the payment of all costs, if judgment be rendered against such appellant; and the county auditor shall cause such bond, with a certified copy of the proceedings of said board, and all the original papers of the cause, to be filed in the office of the clerk of the circuit court, within twenty days thereafter; and such cause shall be docketed for the ensuing term, and further proceedings had, and judgment rendered therein as in other cases of appeal.*

Persons not licensed prohibited from ferrying across the Ohio or Wabash rivers.

SEC. 13. When any person shall ferry across the Ohio or Wabash river, on the Indiana shore any where within one mile of any established ferry, any person or thing whatever, for which the owner of such ferry might have been entitled to ferriage had he ferried over the same, such person so ferrying the same over shall be liable to pay to the owner of such ferry the full amount of such ferriage, unless such established ferry was out of repair, and not sufficiently attended; and in cases of sickness or distress, where delay would be dangerous.

Obstructions.

SEC. 14. It shall not be lawful to obstruct by steamboats, keelboats, flatboats, or otherwise, the landings of ferries established under this act; but such ferries shall be entitled to the exclusive use of the whole width of the routes leading thereto, for all appropriate purposes.

* From an order of the board of county commissioners allowing a bond to be filed, under the statute of 1844, for the purpose of securing the privilege of ferry across a stream to a ferry previously established, an appeal lies to the circuit court. *Davis* vs. *Huff*, 8 Blackf. 276.

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CHAPTER 40.

AN ACT to regulate the remission of Fines and Forfeitures.

[APPROVED JUNE 14, 1852.]

Applicant must forward opinion of clerk, auditor, sheriff, treasurer, &c.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That all applicants to the Governor for the remission of fines and forfeitures, shall forward to him, with their application, the opinion of the propriety of so doing, of a majority of the following officers in the county where the fine was assessed, or forfeiture occurred, viz: the clerk of the circuit court, auditor, sheriff, county treasurer, and such officers as shall from time to time have the care and custody of the common school fund within the county.

Emergency.

SEC. 2. As there is an emergency requiring the immediate taking effect of this act, it is declared to be in full force and effect from and after its being filed with the clerks of the circuit court in their respective counties.

CHAPTER 41.

AN ACT for the encouragement of Fire Companies.

[APPROVED MAY 13, 1852.]

Exempt from militia duty, and service as jurors.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That acting members of any fire company organized under the corporate authorities of any city or town, shall be exempt from the performance of militia duty in time of peace, and from serving as jurors.

Cumulative.

SEC. 2. This act shall be taken as cumulative.

Exempt from city taxes.

SEC. 3. The real and personal property, and the poll of active firemen of regularly organized fire companies, who shall have done the duty of fireman for one year preceding the time of listing to an amount not exceeding five hundred dollars, shall be exempt from the payment of city or corporation taxes.

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CHAPTER 42.

AN ACT for the prevention of Frauds and Perjuries, and requiring certain contracts to be in writing, and declaring certain conveyances, assignments, contracts and mortgages, void.

[APPROVED JUNE 9, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That no action shall be brought in any of the following cases:

Cases not actionable, unless contracts, &c., are in writing. —29 Charles II., chap. 3, sec. 4, A. D. 1676.

First. To charge an executor or administrator, upon any special promise, to answer damages out of his own estate; or,*

Second. To charge any person, upon any special promise, to answer for the debt, default, or miscarriage of another; or,†

Third. To charge any person, upon any agreement or promise, made in consideration of marriage; or,

Fourth. Upon any contract for the sale of lands; or,‡

*The promise of an administrator to pay a debt of the intestate, need not be averred in the declaration to be in writing; the statute of frauds applying to the proof, and not to the declaration.—*Mills et al.* vs. *Kuykendall*, 2 Blackf. 47, and page 51, note 2.

If a third person be induced to purchase the assignment of a note due from an intestate's estate, by the promise of the administrator that it shall be paid, the promise is not within the statute of frauds, and the administrator is personally liable to the assignee.—*Hackleman* vs. *Miller et al.*, 4 Blackf. 322.

A promise to pay the debt of another must be in writing by the statute of frauds, to be the foundation of a suit, unless the consideration be sufficient to give the promise the character of an original undertaking.—*Chandler et ux.* vs. *Davidson*, 6 Blackf. 367.

A parol promise to pay the debt of another, being within the statute of frauds, is not valid.—*Murphy et al.* vs. *Merry*, 8 Blackf. 295.

See *Gregory* vs. *Logan*, 7 Blackf. 112.

†A. promised in writing on the back of a promissory note held by B., to pay him the a mount of the note, if not collected from the maker; but the consideration of the promise was not specified in the written promise. *Held*, that in a suit by B. against A. on the promise, the writing signed by A. was legal evidence; but *quere* whether it was sufficient of itself to support the action.—*McCoskey et al.* vs. *Deming*, 3 Blackf. 145.

A subsequent promise made by one partner to pay a note given by another for the individual benefit of the latter, though in the firm name, is within the statute of frauds, and not binding.—*Taylor et al.* vs. *Hillyer*, 3 Blackf. 433.

‡A. and B. purchased jointly a land office certificate for a tract of land on which there were some improvements, and the assignment of the certificate was made to A., who paid more of the purchase money than B. The purchasers, by parol agreement, divided the land. By this agreement A. received several acres more than B., together with the improved part of the premises, and was to pay B. a certain sum as the difference in value of the two parts, and to assist B. in improving his part. Each of the parties took possession of his own part of the premises. *Held*, that the agreement was not affected in equity by the statute of frauds.—*Green et al.* vs. *Vardiman et al.*, 2 Blackf. 324.

Sheriff's sales of real estate are within the statute of frauds.—*Ennis* vs. *Waller*, 3 Blackf. 472.

Payment of the purchase money of real estate is not of itself sufficient to take the case out of the statute of frauds. The purchaser's entering into pos-

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Fifth. Upon any agreement that is not to be performed within one year from the making thereof; unless the promise, contract or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized; excepting, however, leases not exceeding the term of three years.

Consideration need not be set forth.

SEC. 2. The consideration of any such promise, contract ,or agreement, need not be set forth in such writing, but may be proved.

session in pursuance of the contract is sufficient. But the mere continuance in possession, by a tenant, after purchase, is not sufficient for that purpose.—*Johnston* vs. *Glancy et al.*, 4 Blackf. 94.

See *Moreland* vs. *Lemasters*, 4 Blackf. 383.

A parol agreement to convey lands is void by the statute of frauds.—*McClure et al.* vs. *McCormick*, 5 Blackf. 129.

See *Clark et al.* vs. *Harrison*, 5 Blackf. 302.

A receipt for the purchase money of real estate may constitute a sufficient agreement under the stutute of frauds, provided it show on its face, or by reference to some other instrument, every material part of a valid contract on the subject, but not otherwise. The doctrine of courts of equity, that payment of part of the purchase money on a parol contract for real estate, and taking possession of the premises under the contract, is such a part performance as takes the case out of the statute of frauds, does not prevail in courts of law.—*Barickman* vs. *Kuykendall*, 6 Blackf. 21.

The statute of frauds does not require that an agreement for the sale of real estate should be signed by both parties. It is sufficient if it have the signature of the party sued.—*Shirley* vs. *Shirley et al.*, 7 Blackf., 452.

A. purchased from a county agent a certain town lot, paid the purchase money, except a small sum, received a title bond, and was put in possession. The obligee sold the lot to B.; B. sold to C.; C. sold to D.; D. sold to E., who made valuable improvements. E. sold to F., who sold to complainant. The title bond remained with the obligee, unassigned during the sales to B., &c. and at each of them the purchase money was paid, and the purchasers respectively put in possession. The complainant, soon after his purchase, obtained from F. an order on the obligee for an assignment of the bond, &c. The obligee acknowledged F.'s right to control the assignment, but afterwards, at F.'s request, assigned the bond to him. *Held*, that the case was not within the statute of frauds. *Held*, also, that the court was competent to decree that F. should assign the bond to complainant, that the obligee should pay the county agent the part of the purchase money due him, and that on such payment, the agent should convey the lot to the complainant —*Underhill* vs. *Williams et al* , 7 Blackf. 125.

Sales of land as well as of goods, at auction, are within the statute of frauds. The auctioneer is generally the agent of both parties to the sale ; and his insertion of the name of the purchaser, immediately on receiving a bid, and on the fall of the hammer in a memorandum of sale containing the terms of the contract, is a signing of a note in writing under the statute, and binds the purchaser. So a memorandum of sale, stating with certainty the terms and conditions of the contract, and signed by the auctioneer with his own name, is sufficient to bind both parties.—*Hunt* vs. *Gregg*, 8 Blackf. 105.

To make a contract under a sheriff's sale valid, under the statute of frauds, a memorandum in writing must be made of it at the time land is struck off.—*Chapman et al.* vs. *Harwood*, 8 Blackf. 82.

Sales of land on execution are within the statute of frauds; and the sheriff's return of the execution stating fully the terms of the contract, if made immediately on striking off the property, will bind the purchaser under the statute; but a return subsequently made will not have that effect.—*Hunt* vs. *Gregg*, 8 Blackf. 105.

Growing crops raised annually by labor, are subject to sale as personal property, before maturity, and their sale does not necessarily require a memorandum in writing, to make it valid.—*Northern et al.* vs. *the State on rel., &c.*, 1 Carter's Ind. Rep. 113.

See, also, *Carpenter* vs. *Lockhart*, 1 Carter's Ind. Rep. 434.

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Conveyance void unless in writing.

SEC. 3. Every conveyance, of any existing trust in lands, goods, or things in action, unless the same shall be in writing, signed by the party making the same, or his lawful agent shall be void.

Resulting trusts

SEC. 4. Nothing contained in any law of this State shall be construed to prevent any trust from arising, or being extinguished by implication of law.*

Specific performance.

SEC. 5. Nothing contained in any statute of this State, shall be construed to abridge the powers of courts, to compel the specific performance of agreements in cases of part performance of such agreements.

Representation of character.

SEC. 6. No action shall be maintained, to charge any person by reason of any representation made concerning the character, conduct, credit, ability, trade, or dealings of any other person, unless such representation be made in writing, and signed by the party to be charged thereby, or by some person thereunto, by him legally authorized.

Contract for goods, when valid.—29 Charles II., chap. 3, sec. 17.

SEC. 7. No contract for the sale of any goods, for the price of fifty dollars or more, shall be valid, unless the purchaser shall receive part of such property, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made, and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.†

Fraudulent sale.—2 Kent, 528, note *a*.

SEC. 8. Every sale made by a vendor of goods in his possession, or under his control, unless the same be accompanied by immediate delivery, and be followed by an actual change of the possession of the things sold, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or subsequent purchasers in good faith, unless it shall be made to appear, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

Definition of "creditors."

SEC. 9. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor, at any time whilst such goods were in his possession or under his control.

Assignment, &c., of goods to be acknowledged and recorded.

SEC. 10. No assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, where such goods are not delivered to the mortgagee or assignee and retained by him, unless such assignment or mortgage shall be acknowledged, as provided in cases of deeds of conveyance, and recorded in the recorder's office of the

*The statute of frauds requires all declarations of trust in lands to be proved by written testimony; but those trusts which arise out of the mere operation of law, are excepted out of the statute, and may be proved by parol testimony.—*Elliott* vs. *Armstrong*, 2 Blackf. 198. See *Blair* vs. *Buss*, 4 Blackf. 539.

†A contract for the sale of goods for fifty dollars or more is within the statute of frauds, and must be in writing, unless, &c. It is not necessary, however, that the contract should be signed by both parties; if it have the signature of the party sued, it is sufficient.—*Smith* vs. *Smith et al.*, 8 Blackf. 208.
See *Law* vs. *Hatcher*, 4 Blackf. 364.

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county where the mortgagor resides within ten days after the execution thereof.

When deemed recorded.

SEC. 11. Every such mortgage shall be considered as recorded from the time it shall be left at the proper recorder's office for that purpose.

Conveyances to defraud purchasers void, &c.—27 Eliz., chap. 4, s. 2, A. D. 1585. 4 Kent, 463.

SEC. 12. Every conveyance of any estate in lands, and charge, trust, limitation of use or uses, upon or in any lands, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration, of the same lands, as against such purchasers for a valuable consideration, shall be void.

Exception.

SEC. 13. No such conveyance, charge, estate, interest, use, or trust, otherwise valid, shall be deemed fraudulent in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge, estate, interest, use, or trust, was privy to the fraud intended.

Conveyance with power to revoke, void.—2 Kent., 440, 441.

SEC. 14. Every conveyance or charge of or upon any estate containing any provision for revocation at the will of the grantor, shall be void, as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked, although the same may not be expressly revoked.

When valid.

SEC. 15. Where a power to revoke a conveyance of any interest in lands, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey such interest to a purchaser for a valuable consideration, such subsequent conveyance shall be valid.

Valid from time right to revoke vests.

SEC. 16. If a conveyance to a purchaser under either of the two last preceding sections shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall be valid from the time the power of revocation shall vest in such person.

Conveyances to defraud creditors void as to them.—3 Hen. VII., chap. 4. A. D. 1486. 13 Eliz., chap. 5, s. 2, A. D. 1570. 2 Kent, 440.

SEC. 17. All conveyances or assignments in writing or otherwise, of any estate in lands, or of goods, or things in action, every charge upon lands, goods, or things in action, and all bonds, contracts, evidences of debt, judgments, decrees, made or suffered with the intent to hinder, delay, or defraud creditors, or other persons of their lawful damages, forfeitures, debts, or demands, shall be void as to the persons sought to be defrauded.

Deeds of gift, &c., void as to creditors.—2 Kent, 440.

SEC. 18. All deeds of gift, conveyances, transfers, or assignments, verbal or written, of goods, or things in action, made in trust for the use of the person making the same, shall be void as against creditors, existing or subsequent, of such person.

Such conveyances, &c., void as to heirs, &c.—13 Eliz., chap. 5, s. 2. 27 Eliz., chap. 4, s. 2.

SEC. 19. Every conveyance, charge, instrument, act or proceeding, declared by the provisions of this act to be void, as against creditors or purchasers, shall be void against the

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heirs, personal representatives, or assignees of such creditors or purchasers.

This act not to affect innocent purchaser.

SEC. 20. The provisions of this act shall not be construed to affect the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or assignor, or of the fraud rendering void the title of such grantor, or assignor.

Fraudulent intent to be a question of fact. 2 Kent, 528: 442, note *a*; 441, note *a*.

SEC. 21. The question of fraudulent intent, in all cases arising under the provisions of this act, shall be deemed a question of fact, nor shall any conveyance or charge be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Conveyances, &c., to be under seal.

SEC. 22. All conveyances, bonds, and powers of attorney, for the conveyance of real estate or of any interest therein, shall be executed with a seal.

CHAPTER 43.

AN ACT concerning the General Fund, and the expenditures chargeable thereon.

[APPROVED MAY 13, 1852.]

General fund, of what to consist.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the general fund shall consist of:

First. The money, debts, and property belonging to the treasury proper, together with the increase and revenue thereof.

Second. Money derived from sale of lots in the city of Indianapolis.

Third. Penalties and forfeitures, not specially appropriated.

Fourth. Moneys received for copies of laws sold.

Fifth. All moneys paid into the treasury and not specifically appropriated to any other fund.

What officers to be paid out of general fund.

SEC. 2. From the general fund shall be paid quarterly, at the treasury, on the last days of January, April, July and October, out of any money not otherwise appropriated, the salaries of Governor, Lieutenant Governor, Governor's private secretary, State Superintendent of public instruction, Secretary of State, Auditor of State, Treasurer of State, judges of the supreme and circuit courts, circuit superintendents, prosecuting attorneys, and State Librarian.

Also, office expenses of certain officers.

SEC. 3. Out of said fund shall also be paid expenses of necessary furniture, stationery, fire-wood, book-binding, printing, and postage of the offices of Governor, Secretary of State,

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Auditor of State, Treasurer of State, Quarter-Master-General, and Adjutant-General; likewise, upon warrant granted on order of the supreme court, the necessary furniture, fire-wood, blank books and stationery of the office of clerk of the supreme court; likewise, upon order of the Governor an annual sum not exceeding one thousand dollars, to defray the contingent expenses of administering the state government.

Other payments out of said fund.

SEC. 4. There shall also be paid out of the said general fund, all money paid for,

First. Compensation of members and officers of the General Assembly, and the contingent expenses of the Senate and House of Representatives.

Second. Compensation of sheriffs for conveying convicts to the State prison.

Third. Transportation, repair, and preservation of public arms.

Fourth. Printing done for the State.

Fifth. All appropriations by law not specially charged to any other fund.

CHAPTER 44.

AN ACT concerning the Three Per Cent. Fund, and the management thereof.

[APPROVED MAY 20, 1852.]

Treasurer to draw money and receipt to auditor.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the money due, or hereafter to become due, to this State from the United States, on account of the three per cent. fund, shall be drawn by the Treasurer of State, who shall file his receipt therefor with the Auditor of State.

Auditor and treasurer to open account with fund.

SEC. 2. The Auditor and Treasurer of State shall open an account with the three per cent. fund, and shall enter thereon all sums received and expended.

Money due county, how drawn and applied.

SEC. 3. Money arising from the three per cent. fund due, or to become due, from the State Treasury to any county, shall be audited and paid to the proper county treasurer, on the draft of the county auditor, who shall charge the treasurer with the same, and shall be applied to the repair, or construction of roads or bridges in the county, at the discretion of the board of county commissioners.

Auditor and treasurer to report situation &c., of fund.

SEC. 4. The annual reports of the Auditor and Treasurer of State shall contain the necessary statements showing the transactions had in relation to, and the situation of said fund.

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SEC. 5. The annual reports of the several county auditors and treasurers shall contain the necessary statements, showing the receipts and disbursements, and the situation of said fund, belonging to their respective counties. Report of county auditor and treasurer, what to contain.

CHAPTER 45.

AN ACT touching Gaming Contracts.

[APPROVED JUNE 11, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, All notes, bills, bonds, conveyances, contracts, mortgages, or other securities made hereafter, when the whole or any part of the consideration thereof shall be for money, or other valuable thing won, on the result of any wager, or for repaying any money lent at the time of such wager, for the purpose of being wagered, shall be void. Contracts, &c., for payment of money won on wager, void.

SEC. 2. If any person by betting on any game, or betting on the hands or sides of such at play at any game, shall lose to any one, any money, or valuable thing, and shall pay or deliver the same, or any part thereof, the person so losing and paying or delivering the same, may within six months next following, recover the money or other valuable thing so lost and paid or delivered, or any part thereof, with costs of suit, by action founded on this act, to be prosecuted in any court, having jurisdiction thereof. Loser may recover.

SEC. 3. In such action, it shall be sufficient for the plaintiff to allege that the defendant has received for the plaintiff's use, the money so lost and paid, or that he has converted the goods won of the plaintiff to his the defendant's use, without setting forth the special matter. Special matter need not be alleged.

SEC. 4. In case the party so losing such money or other thing aforesaid, shall not within the time aforesaid, bona fide, sue and with effect prosecute for the money or thing so lost and paid or delivered, it shall be the duty of the prosecuting or district attorney on information filed with him by such action as aforesaid, to sue for and recover the same in the name of the State, with costs of suit, against any such winner, for the benefit of the wife or minor children, or either of them if living in the order herein named of the person losing the same; and in case there shall be no such wife or minor children, then for the benefit of common schools. After 6 months prosecuting attorney may sue, &c.

SEC. 5. Every person, by virtue of this act, liable to be sued for the money or other thing so won as aforesaid, shall be compelled to answer on oath touching the money or thing so won as aforesaid. Person sued shall answer on oath.

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Person repaying money and costs, discharged from other penalty.

SEC. 6. Upon discovery and repayment of the money or thing so to be discovered or repaid as aforesaid, the person discovering and repaying the same with costs, shall be discharged from any other penalty, which he may have incurred, by winning such money or other things.

CHAPTER 46.

AN ACT fixing the per diem and mileage of the members of the General Assembly, Secretaries, Clerks and Door-keepers.

[APPROVED, JUNE 4, 1852.]

Pay and mileage.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the pay of members of the General Assembly shall be three dollars a day, while in actual attendance, or absent on the business of the General Assembly, or unable to attend from sickness, and three dollars for every twenty-five miles they may travel from their usual place of residence to the seat of Government and back, by the most direct traveled route.

Secretaries and clerks.

SEC. 2. Each House of the General Assembly shall by *viva voce* vote elect the following officers: the Senate one principal secretary, and one assistant secretary; the House one principal clerk, and one assistant clerk, and one door-keeper, who shall, from time to time, have such assistance as their respective Houses shall by resolution permit or direct, and the pay of the above named officers shall be three dollars per day during their attendance upon the General Assembly.

CHAPTER 47.

AN ACT prescribing duties of Governor.

[APPROVED MAY 27, 1852.]

Acts and joint resolutions.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Governor shall cause all acts and joint resolutions passed by the General Assembly to be deposited in the office of Secretary of State, and inform the House in which the same originated, thereof.

May employ counsel, &c.

SEC. 2. He may employ counsel to protect the interest of the State, in any matter of litigation where the same is involved,

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and the expenses incurred under this section, and recapturing fugitives from justice, may be allowed by him and paid out of any money appropriated for that purpose.

Private secretary.

SEC. 3. The Governor may appoint a private secretary.

To cause suit to be brought on official bonds, &c.

SEC. 4. For breach of the condition of any official bond by which the State is injured, the Governor shall direct suit to be brought upon his relation, unless otherwise provided by law, and all costs taxed against such relator shall be paid by the State.

State debt.

SEC. 5. The Governor, Auditor, and Treasurer of State are hereby authorized to procure a temporary loan of money, sufficient in amount to meet the deficiency in the treasury, should any such occur, to pay the semi-annual dividends of interest on the State debt.

Furniture, fuel, stationery, &c.

SEC. 6. The expenses of the necessary furniture, fuel, stationery, and postage of the Governor, and such contingent fund as may be appropriated, shall be paid out of the treasury of the State on the order of the Auditor, as in other cases.

CHAPTER 48.

AN ACT to provide for the opening, vacating and change of Highways.

[APPROVED JUNE 17, 1852.]

Highways Running into more than one County.

Petition for a highway extending into more than one county.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That if twenty-four freeholders of any county shall petition the board of commissioners of such county for the location, change or vacation of any highway running into more than one county, six of which freeholders shall reside in the immediate neighborhood of such highway, setting forth in such petition the beginning, course, and termination of the highway proposed to be located or vacated, or of the change desired to be made, together with the names of the owners and occupants or agents of the lands through which the same may pass, the auditor of such county shall notify the auditors of all the counties in which such highway is to be run, vacated or changed, of the filing of such petition, accompanying such notice with a copy of such petition, which shall be by such auditors laid before their respective boards of commissioners at their next session thereafter, when such boards shall appoint commissioners according to the regulations hereinafter provided.

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Upon being satisfied of the publication of notice, board to appoint commissioners.

SEC. 2. Upon the board of commissioners of the county, in which such petition is first filed, being satisfied that notice thereof has been given at least twenty days before the session of such board at which such petition is to be heard, by publication in a newspaper of each county in which such highway is to be run, vacated or changed, for three weeks successively, or by written or printed notices posted up in three of the most public places in the neighborhood of such highway, in each of such counties, such board shall appoint a commissioner to examine such highway.

Auditor to be notified and to notify commissioners.

SEC. 3. Immediately upon the appointment of such commissioner, the auditor of such county shall notify the auditors of all the counties interested, specifying in such notice the time and place when such commissioners shall meet to commence the examination of such highway; when such last mentioned auditors, and the auditor of the county where such petition is first filed, shall issue precepts to the sheriffs of their respective counties, directing them to notify such commissioners of such appointments, and the time and place of their meeting.

Each board to appoint a commissioner, and in case of disagreement, another to be selected.

SEC. 4. Each of such boards shall appoint one commissioner, and in case the number is equal and cannot agree, the commissioners thus appointed shall appoint another, who shall perform the same duties, and receive the same fees as those first appointed.

Commissioners to meet, take an oath, and proceed to examine highway.

SEC. 5. At the time and place designated in the notice given by the auditor of the county in which such petition is first filed, such commissioners shall meet, and having first taken an oath, to be administered by some authorized officer, to faithfully perform their duties, shall proceed to examine the highway proposed to be located, vacated or changed, and in such examination may employ a surveyor, and a necessary number of chain carriers and markers.

Report of commissioners.

SEC. 6. After such commissioners shall have completed their examination, they shall draw up a report of their proceedings setting forth the highway proposed to be located, vacated, or changed by course and distance, and recommending therein according to the opinion of the majority of such commissioners, either that the prayer of such petition shall be granted or rejected, a copy of which report shall be returned to the board of commissioners of each of the counties interested at their next session thereafter.

If the report is favorable, and no remonstrance, prayer of petition to be granted, and proceedings thereon.

SEC. 7. Upon the return of such report, the board of commissioners shall proceed to determine the prayer of such petition, and if there be no remonstrance against the same, and it is recommended in such report, such board shall declare it granted, and shall direct the auditor of such county to notify the auditors of all the other counties interested thereof; when, if there be no remonstrance pending in either county interested, the auditor of each of such counties, shall notify the supervisors of the road districts in

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his county through which such highway passes, or the change is made, when such supervisors shall open so much of such highway as lies in their respective districts, provided that in case of a highway declared vacated, no notice to supervisors shall be necessary.*

Report unfavorable, petition to be dismissed.

SEC. 8. If such commissioners do not recommend the prayer of such petition to be granted, the boards of commissioners of the counties interested, shall order it to be dismissed; but such order of dismissal shall not be a bar for other petitions thereafter concerning the same subject matter.

Proceedings in case of a remonstrance.

SEC. 9. If, at the session of the board of commissioners at which the report of the commissioners appointed to examine such highway, is presented, any person shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned, by the location, vacation, or change of such highway, to the truth of which he shall take and subscribe an oath, such board shall appoint three persons, residents of such county, to review that part of such highway whereof such complaint is made, and shall direct the auditor of such county to notify all the auditors of the other counties interested, of such remonstrance, when further proceedings touching such petition shall be continued until the ensuing term of such boards.

Examination of reviewers, assessment of damages, report and proceedings thereon.

SEC. 10. Such reviewers, at the time and place designated by the board of commissioners to whom such remonstrance is presented, shall meet, and having taken an oath before some officer authorized to administer oaths, to faithfully perform their duties as such reviewers, shall proceed to examine that part of such highway, or the change thereof complained of, and having done so, shall at the next term of such board, report their proceedings to such board, in which report they shall specify the amount of damages sustained by the person remonstrating, if any; whereupon such board shall determine whether the damages assessed are greater than the utility of the proposed highway or change, and if they shall be of opinion that the prayer of the petition should not be granted, they shall direct the auditor of such county to notify the auditors of the other counties interested thereof, and continue further proceedings in the premises until the next term thereafter, but if they shall be of opinion that the damages should be paid and the prayer of the petition granted, they shall direct such auditor to notify the auditors of the other counties interested, of the amount of such damages, and shall continue further proceedings to the next term thereafter.

A majority of the freeholders remonstrating, petition to be dismissed.

SEC. 11. If more freeholders residing along the highway proposed to be located, or vacated, or change to be made,

*In opening a road established by county commissioners, the supervisor cannot deviate from the course of the road so established.—*Phipps* vs. *The State*, 7 Blackf. 572.

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than those of the same county petition therefor, remonstrate against granting the prayer of such petition therefor, the board of commissioners of such county shall decide against such petition, and shall direct the auditor of such county to notify the auditors of all the other counties interested thereof, and continue further proceedings in the premises until the ensuing term.

If a majority of the boards decide in favor of the petition, its prayer to be granted: but if a majority be against, to be dismissed. No damages assessed, person remonstrating to pay costs.

SEC. 12. At the next term after the reception of notice of any remonstrance, and the proceedings thereon, the auditors of such counties shall lay the same before their respective boards of commissioners, who shall determine whether the prayer of the petition ought to be granted, and shall notify the auditor of each county interested thereof; and if the boards of commissioners of a majority of such counties decide in favor of such petition, at the term of such boards when the same is ascertained, such highway shall be declared located, vacated or changed, and such supervisors notified thereof as hereinbefore provided, but if a majority of such boards decide against such petition, it shall be declared dismissed whenever it is so ascertained; and all damages declared assessed shall be paid equally by the counties interested; and if such reviewers shall fail to assess any damages, the person asking the same shall pay the costs of such review.

Compensation of commissioners, surveyors, &c.

SEC. 13. Such commissioners appointed to examine such highway, and such reviewers, shall receive each one dollar and fifty cents for every day they may be necessarily employed, and such surveyor, chain carriers and markers shall receive such compensation as the board of county commissioners, where such petition is first filed shall deem reasonable, to be paid equally by each county interested.

Order of board to be entered of record.

SEC. 14. Whenever a highway is located, vacated, or changed, the order therefor shall be entered of record in the order book of the board of commissioners of each county interested, in which county such highway or change thereof shall be particularly described by course and distance.

Roads running in but one county, and through more than one township.

Proceedings upon a petition for a highway, change or vacation, extending into more than one township in a county.

SEC. 15. Whenever twelve freeholders of the county, six of whom shall reside in the immediate neighborhood of the highway proposed to be located, vacated, or of the change to be made, shall petition the board of commissioners of the county in which such highway is situate for the location, vacation, or change of any highway, such location, vacation, or change running into more than one township, such board, if they shall be satisfied that notice of such application has been given by publication three weeks successively in a newspaper published in the county, or by posting up notices in three of the most public places in the neighborhood of such highway, or change, at least twenty days before the meeting of the

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board at which such petition is to be presented, shall appoint three persons to view such highway.

Examination of viewers.

SEC. 16. The auditor of such county shall issue a precept to the sheriff thereof, commanding him to notify such viewers of the time, place and object of their meeting, and such viewers, at such time and place, after having taken an oath, before some officer authorized to administer oaths to faithfully perform their duties, shall proceed to view the highway, or such change; and if they shall deem the highway to be located, or the change to be made, of public utility, they shall lay out and mark the same on the best ground, not running through any person's enclosure of one year's standing, without the owner's consent, unless upon examination, a good way cannot otherwise be had: *Provided*, That where the road is laid out upon the line dividing the land of two individuals, each shall give half the road.

Proviso.

Report of viewers, and proceedings thereon.

SEC. 17. Such viewers, or a majority of them, shall make a report of their proceedings at the ensuing session of the board of commissioners of the county in which such location, change or vacation may be made, giving a full description of such location, change or vacation, by routes and bounds and by its course and distance, except that in case of the vacation of a road, or any part thereof, such description only as will designate it clearly, shall be required; and in such case, a copy of the order vacating such highway shall be transmitted by the proper auditor to the trustees of the townships in which such vacated highway is situate, who shall cause the supervisors thereof to be notified accordingly.

No objection being made, order to be entered of record, and township trustees to be notified.

SEC. 18. If no objection be made to such proposed highway, vacation or change, such board shall cause a record thereof to be made, and shall order the same to be opened and kept in repair, which order shall be transmitted to the trustees of the townships in which such location or change is made; and such trustees shall cause a copy of such order to be entered at length on their record book, and notice thereof to be given to the proper supervisor, to work such location or change.

Remonstrance.

SEC. 19. If any person through whose land such highway or change may pass, shall feel aggrieved thereby, such person may at any time before final action of the board thereon, set forth such grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders, as reviewers, and assign a day and place for them to meet.

Examination of the reviewers, and their report.

SEC. 20. Such reviewers, having five days' notice, to be given by the party remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and shall then or on any other day, to which a majority may adjourn, prior to the next session of such board, proceed to review the proposed highway and assess the damages, if any, which such objector

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may sustain from such highway or change being opened, vacated or continued through his lands, and shall report the same to the ensuing session of such board.

Damages assessed, petition may be dismissed, or damages paid. Costs, when taxed against the person remonstrating.

SEC. 21. If a majority of the viewers assess and report damages in favor of the objector, and the board shall consider the proposed highway, vacation or change, to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury; but if a majority report against the claim for damages, the objector shall pay the costs; and when payment of damages is made as herein provided, such highway shall be recorded and ordered to be opened and kept in repair, as hereinbefore provided, after notice to the proper trustees.

Damages unreasonable, another review may be ordered.

SEC. 22. If it shall be made to appear to the board that the damages assessed are unreasonable, they may set aside such assessment and order another review, under the same regulations as provided in case of the first review.

Freeholder residing along highway objecting, another view to be ordered.

SEC. 23. If any one or more freeholders residing in such county, along such proposed highway, vacation or change, shall object to the same at any time before final action thereon, as not being of public utility, other viewers may be appointed, who shall proceed, on a day to be by them designated, after having taken an oath faithfully to discharge the duties assigned them, to examine the proposed highway, and shall make report to such board at their next session, whether or not, in their opinion, the said highway, vacation or change, will be of public utility.

Report against the utility, petition to be dismissed; but if it be favorable, objector to pay costs.

SEC. 24. If a majority of the viewers last named report against the public utility of such highway, the same shall not be established, unless the petitioners will open and maintain the same at their own expense; but if they report favorably thereto, the objector shall pay the costs of the review, and the highway shall be recorded and ordered to be opened and kept in repair; but in no case shall a highway be opened, vacated, or a change be made, if a majority of the freeholders residing along such proposed highway, or along such change, or along the highway proposed to be vacated, shall remonstrate against the same.

Damages to be paid before highway is opened.

SEC. 25. No such highway shall be opened, worked, or used, until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or they shall give their consent thereto in writing filed with the auditor of such county.

Appeal.

SEC. 26. Any person aggrieved by any decision of any board of commissioners, may appeal therefrom to the circuit or common pleas court of such county, upon his filing a bond, with surety and penalty, to be approved by the auditor of such county, conditioned for the due prosecution of such appeal, and the payment of costs, if costs be adjudged against him: and in case proceedings shall be had in more than one county, the auditors of each county, on being notified of

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such appeal by the auditor of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken, all the proceedings in such county; and upon the determination of such appeal, such clerk shall notify the auditors of all the counties interested thereof.*

Highways and changes affecting but one Township.

Petition for a highway extending in but one township, and notice thereof.

SEC. 27. Any person may have a highway laid out, or a change of a highway in any township, on the petition therefor of twelve freeholders residing in such township, six of whom shall be of the immediate neighborhood of such proposed highway or change, to the trustees of such township, after having given twenty days notice thereof, by posting up written notices in three of the most public places in such township.

Appointment of, and notice to viewers.

SEC. 28. Such trustees, on being satisfied of the sufficiency of such petition, and notice thereof, shall appoint three disinterested residents of the township to run such proposed highway or change; and the township clerk shall direct a constable of such township to notify such viewers of their appointment, and in such notice the time and place of their meeting, and a brief description of the proposed highway or change shall be given, which notice such constable shall serve on such viewers.

Oath, examination and report of viewers.

SEC. 29. At the time and place designated, such viewers shall meet, and having taken an oath before some officer authorized to administer oaths, to faithfully perform their duties as such viewers, they shall proceed to examine such proposed highway or change, and make report in writing at a time to be fixed in their appointment, to such trustees, in which report they shall shall state whether such highway or change is a work of public utility; and if so, they shall describe the highway or change by course and distance.

Action of trustees on report.

SEC. 30. Such trustees, if such report declare such highway or change of public utility, shall order the supervisor of the proper road district to lay out and work the same; but if such highway or change is reported as not of public utility, such petition shall be dismissed at the cost of the person applying therefor.

*The persons appointed by the board of commissioners to view part of a State road, &c., reported in favor of a change, and at the same time remonstrances against the change were presented to the board and rejected. The report was admitted to record and filed. *Held*, that an appeal would lie to the circuit court in such case, and that it might be prosecuted by persons who had appeared before the board, and objected to the change. *Held*, also, that the circuit court, on such appeal, should have before it the original petition and report, and try the cause, not as a court of errors, but as a court of original jurisdiction.—*Beeler et al.* vs. *Hantech et al.*, 5 Blackf. 594.

Same points decided in case of *Reddington* vs. *Hamilton et al.*, 8 Blackf. 62; also, in case of *Taylor* vs. *Lucas et al.*, 8 Blackf. 289.

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A majority remonstrating, petition to be dismissed. One person remonstrating, review to be appointed.

SEC. 31. If at any time before such highway is ordered to be laid out or made, a majority of the persons residing along the same remonstrate against granting the prayer of such petitioner, such board shall dismiss it, and if before final action on such petition, any person through whose lands such highway or change runs, shall remonstrate against the same, such trustees shall appoint three disinterested persons to examine the same and assess the damages, if any, which such person sustains by reason of the running of such highway or change through his lands.

Examination and report of reviewers.

SEC. 32. Such reviewers, after having been notified of their appointment, as in case of the appointment of viewers, and after having taken an oath to faithfully perform their duties, shall proceed to examine such highway or change, at a time to be fixed by such trustees, and shall report their proceedings to such trustees.

Action of the trustees upon report of reviewers.

SEC. 33. If such reviewers assess damages, and such trustees consider that the road is of sufficient importance, they may order such damages to be paid out of the township treasury, or, if no damages be assessed, they may order such highway or change to be opened and kept in repair, but if such damages be greater than the utility of the highway or change, such petition shall be dismissed at the cost of the person presenting the same.

Width of township highway.

SEC. 34. Such township highways shall not be less than twenty-five feet wide, but such changes, if made in a highway running into more than one township, shall conform to the width of such highway.

Swinging gates.

SEC. 35. Any person may have swinging gates put on such township highways on his own land under such regulations as such trustees shall prescribe, but in such case he shall keep the same in a condition to be opened by persons on horseback; and any person leaving any such gate open, for every such offense shall be liable to a fine of one dollar, to be recovered before a justice of the peace.

Vacation of township roads.

SEC. 36. Such township roads may be vacated under the same regulations as to the petition, notice, and appointment of viewers, and assessment of damages, as is provided in case of laying out such highway.

Appeals from decision of trustees

SEC. 37. Appeals may be taken by any person aggrieved to the board of commissioners of such county, upon filing a bond with surety and penalty, to be approved by such township clerks, conditioned for the due prosecution of such appeal, and the payment of costs, if costs be adjudged against him, such bond to be filed within thirty days after such decision is made.

Auditor to notify trustees of decision of the board.

SEC. 38. And after the determination of such appeal such board shall cause the proper auditor to notify such trustees thereof, who shall conform thereto.

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General provisions concerning Highways.

Width of highways.

SEC. 39. No county road shall be less than thirty feet wide, and no township road shall be less than twenty-five feet wide; and the order for laying out of any highway shall specify the width thereof.*

Highways on county or township lines to be opened and repaired by supervisors on each side.

SEC. 40. Public highways established on a county or township line, shall be opened and repaired by the supervisors of the proper road districts on each side thereof, and by the joint labor of the hands in each of such districts in each county or township.

Notice to owner or occupant of land to remove fences.

SEC. 41. Whenever any public highway shall have been laid out through any enclosed land, the supervisor shall give the occupant of such land, or the owner, if a resident of the road district, sixty days' notice in writing, to remove his fence; but such owner or occupant shall not be compelled to move such fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice, such supervisor shall cause the same to be done.

Person running highway, when allowed credit therefor.

SEC. 42. If the owner or occupant shall not have been allowed damages for the laying out of such highway upon his land, the supervisor shall give the person removing such fence credit on his highway tax for any amount that the supervisor shall deem just.

Highway not used for six years shall be considered vacated.

SEC. 43. Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and used within six years from the time of its being so laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six years, such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any town: *Provided, however*, That the trustees shall decide that public necessity does not require such road kept open, which decision shall be recorded by the clerk, whereupon said vacated highway shall vest in the rightful owner who may have the title thereof according to law, of the property on each side of said highway.

Proviso.

Actual settlers to possess the rights of freeholders under this act.

SEC. 44. In all applications for the location, change, or vacation of any public highway, actual settlers upon any public lands in any county in this State shall have and possess all rights in this act granted to freeholders.

Highways used for 20 years.

SEC. 45. All public highways which have been or may hereafter be used as such, for twenty years or more, shall be deemed public highways.†

* The board doing county business is not empowered to establish a road of undefined width.—*White* vs. *Conover*, 5 Blackf. 462.

The establishment of a road whose width is not defined, is void.—*Carlton* vs. *the State*, 8 Blackf. 208.

†No presumption of dedication of uncultivated land belonging to the U. S. for a highway can be raised from the use of such land as a highway by the public.—*Phipps* vs. *The State*, 7 Blackf. 512.

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Owners and relatives of owners of land along highway not to be viewers, &c.

SEC. 46. No person owning lands, or who is related by consanguinity to any person owning lands, along any proposed highway or change, shall be competent to act as commissioner, viewer, or reviewer thereof.

Compensation of viewers.

SEC. 47. Viewers and reviewers appointed under this act shall receive one dollar for every day they shall be necessarily employed as such.

Hedges.

SEC. 48. The township board of any township, on petition of an individual desiring to plant a hedge on his land adjoining a public highway, may grant such individual the privilege of placing his fence seven feet on such highway: *Provided*, said fence will not be an obstruction to the highway.

Proviso.

Private road.

SEC. 49. Any person may have a private road laid out, changed, or vacated, upon presenting a petition to the trustees of the township in which such petitioner may reside, under regulations hereinbefore provided for roads running through one township only. If such private road shall extend into more than one township, such petition shall be presented to the county board, under the same regulations, as is provided in case of highways running into more than one township: *Provided*, that such board, or trustees may order such private road to be laid out, changed, or vacated, without any view, if there be no remonstrance against such petition; shall open and keep in repair such road at his own expense: *And provided further*, that such road may be either dirt, plank, McAdamized, gravel or railroad.

Proviso.

CHAPTER 49.

AN ACT for the incorporation of High Schools, Academies, Colleges, Universities, Theological Institutions, and Missionary Boards.

[APPROVED MAY 13, 1852.]

Proceedings to establish.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any number of persons desiring to establish a high school, academy, college, university, theological institution or missionary board, shall first make a statement, verified by the oath of at least five of the same, declaring the name and purpose of the institution; the mode and proposed amount of endowment; the amount then donated or subscribed, and file the same in the office of the clerk of the circuit court of the county in which such institution is proposed to be located, and a duplicate thereof, with the Secretary of State.

Corporate powers.

SEC. 2. When the certificate shall have been filed as aforesaid, the persons subscribing the same, and their successors, shall be a body politic and corporate.

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Shares.

SEC. 3. Donations and contributions shall be divided into, and represented by shares of twenty, fifty or one hundred dollars each, as may be agreed upon between the persons forming such association, and specified in the certificate required by the first section of this act, and one share shall constitute the person contributing the same, a member of such institution, and at all meetings thereof, every member shall be entitled to one vote for each share held or represented by him; but no member shall have more than seventy-five votes, unless provision be made therefor in the by-laws. Proxies shall always be given in writing.

Treasurer and trustees.

SEC. 4. Such corporation shall, within thirty days after filing the statement required in section one, elect a treasurer and at least six trustees thereof, for the term of three years. Trustees so elected shall, as nearly as practicable, be divided by lot into three classes, those drawing the first class shall be trustees one year, those of the second class, two years, and those of the third class, three years, or until their successors are chosen and qualified.

Treasurer's bond.

SEC. 5. The treasurer shall give an official bond, with surety, payable to the State of Indiana, for the use of such institution, in such sum as the board shall approve, and they shall cause an authenticated copy thereof to be filed with the clerk of the circuit court in the proper county.

Trustees to elect a president.

SEC. 6. The trustees thus chosen shall elect a president of the institution, for a term not exceeding six years, who, when elected, with such trustees, shall constitute a board for the government thereof. Such board shall, in all cases, choose the faculty, or other teachers of the institution.

Departments and degrees.

SEC. 7. Colleges and universities incorporated under this act, shall have power to establish law, medical, normal, agricultural, and military departments, and confer degrees therein, and may also confer other academical degrees appropriate to such institutions.

How the character of such institution may be changed.

SEC. 8. A majority vote given at any meeting, called by a notice specifying the time, place, and object thereof, and published for three successive weeks, in a newspaper printed in the county where such institution is situate, if any; otherwise, in some paper printed in the State, nearest thereto; may change the grade and character of such institution to any other provided for in this act; but a certificate of such change, verified by the oath of at least five of the stockholders, shall in like manner with the original statement, be filed with the clerk of the circuit court of the proper county, and the Secretary of State.

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CHAPTER 50.

AN ACT for the recovery of property removed by high water.

[APPROVED, FEBRUARY 20, 1852.]

In case proprietor of land refuses to give up property, arbitrators may be selected, whose decision shall be final.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That when the fence rails or other property of any person or persons in this State, shall be removed by high water, and lodged upon the lands of another, it shall be lawful for the owner or the owners thereof, to proceed within sixty days thereafter, upon the premises where such property may be lodged, and in case the proprietor of said lands shall refuse to deliver up the same, the parties shall each select an arbitrator, who shall examine or hear evidence upon all the circumstances and facts, and determine the case: *Provided*, that if they cannot agree, they shall select an umpire and the decision of a majority of them shall be final between the parties.

Proviso.

Arbitrators to be sworn.

SEC. 2. That before said arbitrators shall proceed as above provided, they shall be sworn to discharge their duties as faithfully, impartially, and according to law, by some person having power to administer oaths.

If ten or more persons claim, notice to be given.

SEC. 3. That when ten or more persons shall claim any property as aforesaid, they shall give notice to all interested of the time and place of such arbitration, and upon hearing all the facts and circumstances in the case, the arbitrators shall award to each, such a proportion of said property as they may deem reasonable and just.

Not trespass to go on land for such purposes.

SEC. 4. That it shall not be considered a trespass for any person to go upon the lands of another, for the purposes in this act mentioned: *Provided*, that such person shall go upon such route as will do the least possible injury to said lands, if it be practicable and convenient.

Proviso.

Repealing clause.

SEC. 5. That all acts and parts of acts coming in conflict with this act are hereby repealed. This act to be in force from and after its passage.

CHAPTER 51.

AN ACT to authorize the formation of companies for the detection and apprehension of Horse Thieves and other felons, and defining their powers.

[APPROVED MARCH 9, 1852.]

Company, how many to compose.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any number of persons, citizens of the State of Indiana, not less than ten nor more than one hundred, may, and are hereby authorized to form themselves

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into a company for the purpose of detecting and apprehending horse thieves and other felons, as hereinafter provided.

Articles of association to be submitted to county board, filed and recorded in the recorder's office.

SEC. 2. Said persons desirous of forming such company, shall each subscribe articles of association, in which shall be set out the name said company may choose, the residence of each member, the number of members, and the number of years said company shall exist, which shall not exceed ten years. But such articles of association, with the names of said members and their residence, shall first be laid before the board of county commissioners of the county in which it is proposed to organize such company; if said board shall approve the objects of such association, as well as the by-laws governing the same, the said association shall be deemed organized and incorporated under the provisions of this act; and not otherwise: *Provided, nevertheless,* That said board of commissioners shall, at any meeting thereof, have the right, and they are hereby empowered to strike the name of any member from such association, if they deem the public good to require it, and that such examination may, from time to time, be had. It shall be the duty of the secretary or clerk of such association to report, under oath, the name of each and every member of such association, with their respective places of residence, whenever the board of commissioners of the county shall require it, under the penalty of forfeiting their corporate privileges and powers. Said articles of association shall be filed and recorded in the office of the county recorder of the county in which a majority of the members of said company may reside, and a certified copy of said record shall be received as evidence, in any court of this State, of the existence of such company and membership of any person belonging thereto.

Proviso.

Powers of the company.

SEC. 3. Whenever said articles of association shall be filed, as above provided, the said company, under the name and style which they may designate, shall be a body politic and corporate, and by such name may sue and be sued, plead and be impleaded, answer and be answered unto, in any court of competent jurisdiction in this State, and shall have succession during any time not exceeding ten years, as provided in the second section of this act; may have and use a common seal, and alter the same at pleasure.

Officers of company.

SEC. 4. Said corporation may elect or appoint all such officers as they deem necessary for their organization, who shall severally hold their offices and perform the duties that may be required of them by such company; said officers shall serve either for or without compensation, as said company may direct.

Constitution and by-laws.

SEC. 5. A majority of said company shall have power to adopt a constitution and by-laws for their government, and enforce obedience to the same, which constitution and by-laws shall be consistent with the constitution and laws of this State and of the United States.

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Quorum.

SEC. 6. Such number of members shall form a quorum to transact business and sit upon their own adjournments, or call meetings, under such regulations as said company may adopt.

May increase number and expel members.

SEC. 7. Said corporation may, at any time, add to their numbers under the limitations prescribed in this act, and may expel members in such manner and for such cause as may be prescribed in the constitution and by-laws of such company.

Notice of the admission and expulsion of a member to be recorded.

SEC. 8. Whenever a new member has been admitted or a member is expelled, such fact shall be certified by the proper officer of such company, and recorded in the office of the county recorder where the original articles of association have been recorded.

Donations, taxes, fines.

SEC. 9. Such company may receive donations in money, or other property, to be applied to the purposes of their organization, and assess taxes or impose fines upon their members, as may be prescribed in their constitution and by-laws.

Apprehension of felons, &c.

SEC. 10. Such company shall have power to call to their aid the peace officers of this State, in accordance with law, in the pursuit and apprehension of felons, and reclaiming stolen property, and each and every one of the members of such company, when engaged in arresting offenders against the criminal laws of this State, shall be entitled to all the rights and privileges of constables.

CHAPTER 52.

AN ACT touching the marriage relation and liabilities incident thereto.

[APPROVED MAY 31, 1852.]

Extent of husband's liability for wife's debts.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That in all marriages hereafter contracted, the husband shall be liable for the debts and liabilities of the wife contracted before marriage, to the extent of the personal property he may receive with or through her, or derive from the sale or rent of her lands, and no farther.*

* If a wife commit an indictable offence without the presence or coercion of her husband, she alone is responsible for the offense.—*Pennybaker* vs. *the State*, 2 Blackf. 484; see *Frakes* vs. *Brown*, 2 Blackf. 295.

If, in a suit brought by the State, on the relation of a *feme sole*, the relator's subsequent marriage be suggested and the plaintiff recover, the judgment should be for the State on the relation of husband and wife.—*Trimble et al.*, vs. *State*, 4 Blackf. 42; see 4 Blackf. 174, 463.

The christian name only of the wife is sufficient in a suit against husband and wife.—*Cox* vs. *Runnion, et ux.*, 5 Blackf. 176.

In a suit against husband and wife for a debt due by the wife, *dum sola*, the

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Same.

SEC. 2. Such liability of the husband shall not be extinguished by the death of the wife.

Judgments may be joint, but levies on wife's land only.

SEC. 3. When any woman, against whom any liability exists, shall marry, and has or acquires lands, judgment on such liability may be rendered against her and her husband jointly, to be levied of such lands only.

In case of wife's torts.

SEC. 4. When any judgment is rendered against a husband and wife, for the tort of the wife, execution on such judgment shall be first levied on the land of such wife, if she have any.

Lands of wife not liable for husband's debts.

SEC. 5. No lands of any married woman, shall be liable for the debts of her husband; but such lands and the profits therefrom, shall be her separate property, as fully as if she was unmarried: *Provided*, that such wife shall have no power to incumber or convey such lands, except by deed, in which her husband shall join.*

Proviso.

Husband's separate deed, &c.

SEC. 6. The separate deed of the husband, shall convey no interest in the wife's lands.

Suits, how brought.

SEC. 7. All suits relative to such lands, shall be prosecuted by or against the husband and wife jointly, or if they be separated, in the name of the wife alone, and in case of such separate suit, the husband shall not be liable for costs.

plaintiff cannot prove admissions made by the wife after her marriage respecting the debt.—*Brown et ux.* vs. *Lasselle*, 6 Blackf. 147; see 8 Blackf. 221.

Process need only be served on the husband; subsequent proceedings should be against both defendants.—*King* vs. *McCampbell*, 6 Blackf. 435; see 6 Blackf. 364.

A husband is a proper party to a *scire facias* on a justice's transcript of a judgment rendered against his wife whilst *sole*.—*Campbell et al.* vs. *Baldwin*, 6 Blackf. 364.

In assumpsit against husband and wife on a promissory note made by the wife *dum sola*, and *non*-assumpsit pleaded, the plaintiff must prove marriage.—*Wallace et ux.*, vs. *Jones*, 7 Blackf. 321.

A suit cannot be sustained by husband and wife for a libel on them both.—*Hart* vs. *Crow et ux.*, 7 Blackf. 351. In the case of such libel there should be two actions, one by the husband for the injury to him, and the other by husband and wife for the injury to the wife.—*Ibid.*

If, pending such suit the husband die, and the suit proceed against the wife alone, her admissions of the debt made are evidence against her.—*Lasselle* vs. *Brown*, 8 Blackf. 221. As to the wife's agency see 8 Blackf. 240, *Casteel* vs. *Casteel*.

*A *feme covert* may, by statute, join with her husband in the execution of a conveyance of real estate; but she cannot be bound by any of the covenants contained in the conveyance.—*Aldridge* vs. *Burlison et ux.*, 3 Blackf. 201.

Quare: Does not section 7 of this act change the rule laid down in the foregoing case? See also 5 Blackf. 309.

A *feme covert* cannot alien her real estate unless her husband join in the conveyance.—*Scott* vs. *Purcell et al.*, 7 Blackf. 66.

If a husband sell his wife's land for his own benefit, under an agreement with her to purchase other land for her of equal value, and he afterwards make such purchase, and cause the vendor to execute a deed to his wife, the lands so conveyed will not in equity be subject to the husband's debts contracted subsequently to his payment for the land, but before the execution of the conveyance.—*Barnet et al.* vs. *Goings et al.*, 8 Blackf. 284.

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CHAPTER 53.

AN ACT for the government of the Indiana Hospital for the Insane, and the care of the insane of Indiana.

[APPROVED JANUARY 15, 1852.]

Preamble. WHEREAS, by the taking effect of the present constitution, the office of associate judge is abolished: And whereas, there is no law now in force regulating the admission of patients into the Hospital for the Insane: And whereas, an emergency exists making it necessary that this act shall shall take effect immediately: therefore,

Commissioners, how elected, tenure of office, vacancies. SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be six commissioners of the Indiana Hospital for the Insane, who shall be elected by a joint vote by the General Assembly, and three of whom to be determined by lot, shall serve two years, and the other three four years from the day of their election, and until their successors are elected and qualified. When a vacancy occurs during the recess of the General Assembly, it shall be filled by the Governor. The person so appointed shall serve until an election is made by the General Assembly. The person elected by the General Assembly shall serve out the residue of the term of the person holding the appointment when the vacancy occurred: *Provided*, No person holding the office of trustee in either of the benevolent institutions of the State shall hereafter be elected or appointed to the office of commissioner of said hospital: *Provided, however*, That those of the present commissioners who have not served four years from the time of their elections, shall continue to serve as such commissioners until they shall have served four years from the dates of their respective elections.

Proviso.

Bond—oath. The commissioners, before entering upon the duties of their office, shall severally take an oath or affirmation, faithfully and impartially to discharge their duties as such commissioners, and in all respects conform to the laws in force relating to said hospital; and in addition to the compensation now allowed by law to commissioners, any commissioner residing out of the county of Marion shall be allowed six cents per mile for each mile going to and returning from the meetings of said commissioners, estimated by the most direct route from his place of residence.

Mileage.

Duties of commissioners. SEC. 2. The commisioners shall be entrusted with the general control and management of the hospital. They shall prescribe by-laws for the government of the same, conduct its affairs agreeably to the laws in force and such by-laws as they may establish. They shall have authority to appoint a superintendent to take charge of the patients and hospital,

Their powers.

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and to appoint a matron and such assistant physicians, stewards, and other principal officers as may be needed for the efficient and economical administration of the affairs of the institution. They shall, in their by-laws, prescribe the duties of their respective officers, their tenure of office, and determine their salaries, except as otherwise provided by law. The commissioners may, at their pleasure, remove from office any officer of said institution, except the superintendent; and they may remove the superintendent for incompetency, willful neglect, or refusal to discharge any of his duties, or for any misconduct on his part which might render it improper for him to continue longer in his said office.

When to visit hospital.

SEC. 3. Two of the commissioners shall visit the hospital together, monthly; a majority of them together semi-annually, and all the commissioners together shall make at least one visit during the year. An annual meeting of the commissioners shall be held on the second Tuesday of November.

Annual meeting.

Proceedings, reports, &c.

SEC. 4. The commissioners shall keep a full account of their proceedings in a book to be provided for that purpose. The officers of the institution shall make reports to the commissioners, as they may from time to time require. The superintendent and treasurer shall severally make full reports to them at their annual meeting, and the commissioners at that meeting shall make a full report to the General Assembly, accompanying the same with the annual reports of the superintendent and treasurer.

Commissioners may hold in trust property, &c.

SEC. 5. The commissioners may take and hold in trust, for the hospital, any lands conveyed or devised, and any money or other personal property, given or bequeathed, to be applied to any purpose connected with the institution.

Treasurer.

SEC. 6. The Treasurer of State shall be treasurer to the hospital, and shall collect all its debts; and for any neglect or violation of duty, he and his sureties shall be liable as in other cases.

Qualification and duties of superintendent, compensation, tenure of office.

SEC. 7. The superintendent to be appointed under this act shall be a physician and a person of knowledge, skill and ability in his profession. He shall reside in the hospital, and devote his entire time and attention to the same, and the patients therein. He shall receive for his services an annual salary, to be fixed by the commissioners, and paid quarterly out of the State treasury, upon the warrant of the Auditor of State, and shall also have the boarding of himself and family in the hospital free of charge. He shall continue in office four years, unless sooner removed by the commissioners; and before entering upon the duties of his office, he shall take an oath or affirmation that he will diligently, faithfully and impartially discharge all the duties required of him by law.

Powers and duties of superintendent.

SEC. 8. The superintendent shall be the chief executive officer of the hospital, and shall have the care and control of every thing connected therewith. He shall see that the

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several officers of the institution faithfully and diligently discharge their respective duties. He shall employ such attendants, nurses, servants, and other persons, as he may think proper, and assign them their duties, and may at pleasure discharge them. He shall receive from the proper persons the patients entitled to admission into the hospital, and when cured, discharge them. In all cases, however, he shall be subject to the control of the commissioners.

Official seal; reports.

SEC. 9. The superintendent shall provide an official seal for the hospital, upon which shall be the words "Indiana Hospital for the Insane." He shall make reports to the commissioners, as by section four of this act required, and in all things he shall conform to the requirements of the Legislature, and to the by-laws made by the commissioners for the government of the hospital.

Who may receive medical treatment; proceedings in case of insanity.

SEC. 10. Insane persons residing in this State, having a legal settlement in any county therein, shall be supported, and receive medical treatment in the hospital at the expense of the State, subject to the limitations and restrictions hereinafter mentioned to entitle such person to admission in the hospital, the following proceedings shall be had. Some respectable citizen residing in the proper county, shall file with one of the justices of the peace of said county, a statement in writing, which shall be substantially as follows:

Form of statement.

State of Indiana, ——— county, ss: The undersigned, a citizen of Indiana, states that ——— (naming the person) is insane. His insanity is of ——— duration, (or his being at large is dangerous to the community.) He is a resident of ———township, in this county, and has a legal settlement in the State of Indiana. These facts can be proven by ——— and ——— (naming at least two persons, one of whom shall be a respectable physician.) Dated this ——— day of ———
A. D. ———. A. B.

Witnesses to be subpœnad.

SEC. 11. Such justice of the peace shall thereupon order the clerk of the circuit court of such county to issue subpœnas for the persons named as witnesses, and such other persons as he may think proper, commanding them to appear before him at the court house in said county at a specified time, to testify concerning the facts set forth in said statement. Subpœnas may also be issued on behalf of the person alleged to be insane.

Duty of justice of the peace in such cases.

SEC. 12. Before the time specified for the appearance of the witnesses, the justice of the peace ordering the subpœnas to issue, together with any other justice of the peace of said county, shall visit the person alleged to be insane, and may, if he deems it necessary, employ some respectable physician of such county, best acquainted with the person alleged to be insane, to accompany them in such visit.

Examination of witnesses.

SEC. 13. At the time appointed (unless investigation shall be adjourned) the officers, as in the 12th section of this act

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provided, shall proceed to examine the witnesses in attendance, at least one of whom shall be a physician.

When satisfied with statement, medical witness to certify.

SEC. 14. If, after such a visit and inquest, the officers shall be satisfied of the truth of the facts set forth in the statement, they shall require the medical witness forthwith to make out a certificate setting forth:

First. That the patient is free from any infectious disease or vermin.

Second. The age of the patient, and a concise history of the case.

Third. The duration of the disease dating from the first symptoms.

Fourth. The supposed exciting cause of the disease.

Fifth. Whether the disease is hereditary.

Sixth. Whether the patient has been subject to epilepsy.

Seventh. Whether the patient has made any attempt to commit violence on himself or others.

Eighth. Whether married or single.

Ninth. Whether a professor of religion, and if so, of what denomination.

Tenth. Occupation.

Eleventh. The medical treatment pursued in the case, and any other circumstances known to the physician, tending to throw light on the subject.

Such examining officers shall likewise make out a certificate as follows:

Certificate of examining officers.

The State of Indiana, ——— county, ss:

We, the undersigned, justices of the peace, in and for said county, hereby certify that we have visited ——— of said county, a person alleged to be insane, and have this day held an inquest in regard to him, according to law. We are satisfied that he is insane, and a proper patient to be sent to the Hospital for the Insane, for treatment; that his disease is of ——— duration; that his being at large would be dangerous to community; that he is a resident of ——— township in said county, and has a legal settlement within the State of Indiana.

Witness our hands this ——— day of ——— A. D. ———.

A. B.
C. D.

Certificates of examining officers and medical witness when not satisfied, &c.

SEC. 15. If, after such visit and inquest, the said examining officers shall not be satisfied of the existence of any of the facts necessary to be certified to entitle the person alleged to be insane to admission into the hospital, they shall make out a certificate in the same form with that required by the preceding section, setting forth the necessary facts of which they are satisfied, and the necessary facts which are not established to their satisfaction. The medical witness shall also make out a certificate as above required.

Statement to be deposited with clerk.

SEC. 16. Immediately after the inquest, the said examining officers shall deposit with the clerk of the circuit court the statement in writing, their certificate, and that of the medical

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witness, all of which he shall label, file and carefully preserve in his office. It shall be the duty of the clerks of the circuit courts, in their respective counties, to attend such investigation, and keep a book in which the proceedings in the investigation shall be recorded, and the clerk shall make out a bill of the costs, and certify the same to the county auditor, and upon his warrant the same shall be paid by the county treasurer.

Duty of clerk.

Duty of clerk upon receiving certificates.

SEC. 17. The clerk of the circuit court, upon receiving the certificate of the said examining officers, and the certificate of the medical witness, made out according to the fourteenth section of this act, shall forthwith apply to the superintendent for the admission of said person into the hospital. He shall at the same time transmit copies of said certificates under the seal of the circuit court. Upon receiving the application, the superintendent shall immediately advise the clerk whether the patient can be received, and if so, when. The clerk shall thereupon, in due season, for the conveyance of such person to the hospital by the time appointed, issue his warrant to the sheriff, or any other suitable person, commanding him forthwith to arrest such insane person, and convey him or her to the hospital. If the clerk be satisfied of its necessity, he may authorize one or more assistants to be employed. Said warrant shall be substantially as follows:

Form of warrant of clerk.

The State of Indiana ——— county, ss:

To ———————, Greeting:

Whereas: The proceedings necessary to entitle ——— to be admitted into the Indiana Hospital for the Insane as a patient, have been had according to law. You are hereby commanded forthwith to arrest said person, and convey him to said hospital, (and you are hereby authorized to take to your aid ——— assistants, if deemed necessary by you.) After executing the warrant, you shall make due return thereof to this office.

Witness my hand and seal of the ——— circuit court, this ——— day of ——, A. D. ——.

——————— Clerk.

Upon receiving the patient, the superintendent shall endorse upon said warrant a receipt substantially as follows:

Indiana Hospital for the Insane, A. D. ——.

Form of receipt of superintendent.

Received, this ——— day of ——— the patient named in the within warrant.

——————— Superintendent.

Disposition of warrant.

This warrant with the receipt thereon, shall be returned to the clerk who issued it, and shall be filed by him with the other papers, relating to the case: *Provided*, That in all cases the relatives of the insane person shall have a right if they choose to convey him to the hospital. In such case the warrant shall be directed to one of them, and the person to whom it is directed, and his assistants, shall, if demanded, receive the same compensation allowed for like services to

Proviso.

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others: *Provided also*, That if the medical witness shall not state in his certificate that the patient is free from any infectious disease, and from vermin, it shall not be the duty of the clerk to apply to the superintendent as hereinbefore provided.

Duty of clerk in supplying clothing for patient.

SEC. 18. When a patient is sent to the hospital it shall be the duty of the clerk to see that he is supplied with proper clothing; and if not otherwise furnished, the clerk shall purchase it; and in such case the same shall be paid for upon the certificate of the clerk, and the order of the county auditor out of the county treasury. For a male patient such clothing shall be as follows: A coat, vest, and two pairs of pantaloons, all of woolen cloth; two pairs woolen socks, two pocket handkerchiefs, a black stock, or neck handkerchief, a good hat of fur or silk (or comfortable cap,) a pair of shoes or boots, at least two cotton shirts, and a comfortable overcoat. For a female patient, two strong gowns, two flannel petticoats, two pairs of woolen stockings, one pair of shoes, two handkerchiefs, at least two cotton chemises, and a large warm shawl or cloak. The clothing shall be new, or as good as new, the woolen of a dark color, and shall be delivered in good order, with the patient, to the superintendent.

When superintendent to supply clothing.

SEC. 19. When the patients are not otherwise supplied with clothing, they shall be furnished by the superintendent, who shall make out an account therefor, in each case, against the respective counties from which said patients were sent, in an amount not exceeding the sum of twenty dollars per annum for every such patient; which account shall be signed by the superintendent, and attested by the seal of the hospital, and shall be delivered to the Treasurer of State to be by him collected of such county, as a debt due the said institution.

Funeral charges

SEC. 20. In case of the death of a patient at the hospital, whose funeral charges are not otherwise supplied, accounts thereof shall he made out, attested and collected, as provided in the next foregoing section.

Penalty for neglect of clerk or other person.

SEC. 21. If the clerk shall neglect to deliver to the proper person a warrant for the conveyance of a patient to the hospital, as herein provided; or if the person to whom the warrant is directed, shall not within fifteen days after the receipt thereof, deliver the patient at the hospital, the clerk, or person so offending, shall forfeit the sum of fifty dollars to be recovered with costs, in an action in the name of the superintendent for the use of the patient; and if any insane person shall be conveyed to the hospital before the superintendent shall have given notice that he can be recovered, as hereinbefore provided, no fee whatever shall be paid to those by whom he was so conveyed.

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Patient not to be conducted with criminals, or suffered to drink ardent spirits.

SEC. 22. If any person conveying a patient to the hospital under the provisions of this act, shall conduct him in company with criminals going to the penitentiary, or shall suffer such patient to drink ardent spirits, the person so conveying him and his assistants, shall forfeit all claim to the compensation allowed them by this act.

Clerk to direct that care be taken of the patient, and that provision be made for his comfort.

SEC. 23. If, according to the result of the inquest aforesaid, the patient shall be entitled to admission into the hospital, the clerk shall direct how he shall be taken care of until he can be admitted; and if necessary, may direct his confinement in the county jail; and if all things needful for his comfort and proper care be not otherwise supplied, he shall furnish them, and the same shall be paid out of the county treasury, on certificate of the clerk, and order of the county auditor.

How patient may be discharged.

SEC. 24. Any patient may be discharged from the hospital upon the application of the superintendent to the commissioners, and the order of one of the commissioners thereupon. Incurable and harmless patients shall be discharged whenever it is necessary to make room for a recent case, as ordered by the commissioners.

Duty of superintendent in case of removal of patient; clerk to issue warrant

SEC. 25. Whenever an order shall be made for the removal of a patent from the hospital, the superintendent shall immediately give notice thereof under his official seal, to the clerk of the circuit court of the county from which said patient was sent, and thereupon the clerk shall forthwith issue his warrant to the sheriff of said county, which warrant shall be substantially as follows:

Form of warrant.

State of Indiana, ——— county, ss:

To the sheriff of ——— county, greeting:

Whereas, the proper authority has directed that ——— a patient in the Indiana Hospital for the Insane from this county, be removed from said Hospital. You are, therefore, hereby commanded, forthwith to remove said patient, and return him to ——— township in this county, whence he was taken to the hospital.

Witness, my hand and seal of the ——— circuit court, this ——— day of ———, A. D. ———.

——— *Clerk.*

Duty of sheriff; penalty.

Immediately upon receiving such warrant, it shall be the duty of the sheriff, by himself or deputy, forthwith to execute the same, and return it to the clerk by whom it was issued; and if any clerk, upon receiving such notice, shall refuse or neglect for the space of five days to issue, and place such warrant in the hands of the sheriff, or if such sheriff shall refuse to receive the same, or neglect, for the space of twenty days after receiving the warrant, to demand such patient of the superintendent, the expense of the patient shall, from the date of the notice to the clerk until his removal, be charged at the rate of two dollars per week against the person so offending; and the amount may be recovered in an action, with the cost

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of suit, in the name of the superintendent against the clerk or sheriff so offending: *Provided, however*, that it shall in no case be necessary for the superintendent to give such notice to clerk, when the friends of such discharged patient are ready and willing to remove him; but such patient shall be at once entrusted to their care. Proviso.

SEC. 26. Where a patient is discharged as cured the superintendent shall furnish him with suitable clothing, and a sum of money not exceeding twenty dollars, unless otherwise supplied. Clothing to be furnished patient if not supplied.

SEC. 27. No idiot shall be admitted into the hospital, and every such patient therein shall be discharged. No idiot admitted.

SEC. 28. If the application shall be made for the admission of more patients than the hospital can receive, a selection shall be made as follows: Rules of selection, when there are more applicants than can be admitted.

First. Recent cases, *i. e.*, when the disease is of less than one year's duration, shall have the preference over all others in the county.

Second. Chronic cases, *i. e.*, when the disease is of more than one year's duration, presenting the most favorable prospect of recovery, shall be next preferred.

Third. Those for whom applications have been the longest on file, other things being equal, shall be next preferred.

Fourth. Each county shall be entitled to its just proportion, according to its population; but the commissioners, in the exercise of a sound discretion, may, if necessary, give preference to recent cases from one county, over chronic cases from another county.

SEC. 29. When any patient, discharged from the hospital as cured, shall again become insane, any respectable physician may file with the clerk of the circuit court a certificate, setting forth the recurrence of the disease, and such facts and suggestions relating thereto as he may deem material. Upon receiving such certificate, the clerk shall immediately transmit a copy thereof, authenticated by the seal of the circuit court to the superintendent; and thereupon the same proceedings shall be had, in all respects, as when the certificate of the examining officers holding the inquest was transmitted. Proceedings in case a discharged patient becomes insane.

SEC. 30. Should any insane person elope from the hospital and return to the county from whence he was committed, it shall be the duty of the sheriff of said county, upon being notified by the superintendent, forthwith to apprehend him, and take him back to the hospital, and the sheriff shall be paid by the steward of the hospital, by order of the superintendent, the same fees as provided in other cases for the commitment of insane persons to the hospital. Proceedings in case of the escape of an insane person from the hospital.

SEC. 31. The taxable costs and expenses to be paid under the provisions of this act, shall be as follows: To the examining officers holding the inquisition, each two dollars per day. To the medical witness accompanying the officers on Costs and fees.

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their or his visit to the person alleged to be insane, or attending the investigation or making out a certificate, as required in section fourteen of this act, three dollars per day. To other witnesses the same fees as are allowed by law in other cases in the circuit court. To the clerk of the circuit court the same fees as are allowed by law for the like services in other cases, and the amount of postage upon all the communications to and from the superintendent, which said clerk is required to pay. To the sheriff for serving process herein, and attending the inquisition, the same fees as are allowed by law for like services in other cases, and for taking a patient to the hospital, or removing one therefrom, upon the warrant of the clerk; mileage going and returning at the rate of eight cents per mile, and fifty cents per day for the support of each patient on his way to and from the hospital. To each assistant allowed by the clerk, and accompanying the sheriff, mileage at the rate of eight cents per mile going and returning; the compensation in both instances to be made from the county seat to the hospital by the nearest route. To other persons discharging the duties of sheriff herein, as by this act provided, the same fees as herein allowed to the sheriff, and to the assistants of such person the same fees as are herein allowed the assistants of the sheriff. The costs specified in this section shall be paid out of the county treasury of the proper county, upon the certificate of the clerk, and the order of the county auditor.

Writ of *habeas corpus* may issue.

SEC. 32. When any person shall be confined as insane, a writ of *habeas corpus* may be issued, as in other cases, for his discharge, and the question of insanity shall be decided at the hearing. A decision of insanity shall not operate as a bar to the issuing of another writ: *Provided, however*, That when a patient is admitted into the hospital, and a trial of his insanity has been held upon one writ, no trial shall be had upon another within the period of three months from the date of the first.

Proviso.

In what respect not to affect former laws.

SEC. 33. No part of this act shall be construed to affect or change the laws heretofore in force in relation to the erection and completion of said hospital, and the improvements of the hospital grounds, nor in the manner of contracting work or materials therefor, nor in the manner of paying for such work or materials; but the same shall in all particulars be done according to the law heretofore in force in relation thereto; nor shall the same in any way affect the tenure of the present officers; nor any action accrued or depending in favor of said hospital.

Nature and condition of bond.

SEC. 34. When any officer of the institution is required by the by-laws of the commissioners to give bond with security for the faithful performance of his duties, such bond shall be made payable to "the Indiana Hospital for the Insane," upon such conditions as such commissioners may prescribe.

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SEC. 35. The superintendent shall not be bound to appear and testify in any court in this State as a witness in any civil cause, and in lieu thereof, his deposition may be taken and read in evidence on trial. Superintendent not compelled to appear in court as witness.

SEC. 36. This act shall take effect and be in force from and after its passage and publication. When to take effect.

CHAPTER 54.

AN ACT for the incorporation of Insurance Companies, defining their powers, and prescribing their duties.

[APPROVED JUNE 17, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That when any number of persons not less than nine, shall associate themselves together for the purpose of organizing an insurance company, they shall designate three persons to act as commissioners, to superintend and receive subscriptions to the capital stock of such company, and such commissioners shall first give twenty-one days' notice in one or more newspapers published in the counties where the subscription books are proposed to be opened, stating therein the time and place, or places of receiving such subscriptions. Subscription to stock, how raised.

SEC. 2. The capital stock of any insurance company organized under this act shall not be less than one hundred thousand dollars, in shares of fifty dollars each; but such capital stock may be increased to an amount not exceeding five hundred thousand dollars, by a vote of two-thirds of the directors. Amount of stock; shares.

SEC. 3. The commissioners shall attend at the time and place or places specified in such notice, and open books for subscription of stock, and any person, company or corporation may subscribe the same, and shall pay at the time of such subscription, two dollars on each share. The books may be closed when the whole of the capital stock is subscribed, but not otherwise, and when a board of directors is elected, as hereinafter provided, said commissioners shall deliver to such board the books and money paid in upon subscriptions as aforesaid. Subscription.

SEC. 4. The business of every such company shall be managed and conducted by not less than seven, nor more than thirteen directors, who shall also be stockholders, one of whom shall be president of the company; and they shall hold their offices for one year, and until others are chosen and qualified in their stead. Directors.

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Secretary.

SEC. 5. Such companies shall elect annually, or oftener, a secretary, who shall be the clerk of the company, and shall be sworn to the faithful discharge of his duty; and he shall, in addition to his other official duties, keep a true record of all the votes of the stockholders and of the directors, and a true list of the stockholers, and the number of shares held by each one, and shall make proper entries of every transfer of shares, in a book to be by him kept for that purpose.

Directors, how chosen.

SEC. 6. The directors shall be chosen by the stockholders once in each year, at such time and place, and in such manner as shall be provided in the by-laws of the company; all elections shall be by ballot; absent stockholders may vote by proxy, authorized in writing; twenty days' notice shall be given of all elections, and of annual or special meetings.

President and vice president.

SEC. 7. The directors shall choose from their number, one person to be president, and one to be vice-president, who shall be sworn to perform faithfully the duties of their respective offices, and every vacancy in the office of president, or vice-president, and directors that may occur, shall be filled by a new election, as hereinbefore prescribed.

Special meetings.

SEC. 8. Special meetings shall be called by the secretary or clerk of the company, upon the written application of the owners of one-fifth of the capital stock, to be held at such time and place as he shall direct, for the purposes set forth in such application.

Quorum.

SEC. 9. A majority of the directors shall constitute a quorum to do business; and all questions, unless otherwise provided, shall be decided by a majority vote of those present.

Corporate powers.

SEC. 10. All persons who are stockholders in any such insurance company are hereby constituted and declared a body politic and corporate, by such name and style as the company may adopt, to continue thirty years from and after the organization of the same.

May receive and hold real estate.

SEC. 11. Such company may acquire and hold real estate necessary for the transaction of its business, to an amount at any time not exceeding thirty thousand dollars, and may take and hold real estate, or securities, mortgaged or pledged for the payment of any debt due or becoming due; and also purchase on sales made by virtue of any judgment or decree of any court, in such company's favor; and may take and receive real estate in payment, or in part satisfaction of any debt previously contracted or due; but all real estate, other than that retained for the transaction of its business, shall be sold, and converted into money or stocks, as soon as the same can be done advantageously: *Provided*, Such company shall be required to offer said real estate once in every two years, at public auction, to the highest bidder.

Stock, when to be paid in, &c.

SEC. 12. The capital stock of such company shall be paid in within eighteen months from the time of its subscription, in such sums as the directors may require; and such stock

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shall be transferable and assignable on the books of the company, in such manner as the by-laws may prescribe.

Auditor's statement.

SEC. 13. Whenever the president and directors, or a majority of them, shall certify under oath, before an officer entitled to administer the same, that one half of the capital stock is actually paid in, and a moiety of said half has been invested in solvent stocks, and shall produce the subscription books, verified by the oath of the commissioners superintending such subscriptions, the Auditor of State, if upon inspection of such books, certificate, and stock securities, and all other matters connected therewith, shall be satisfied that the requirements of this act have been complied with, upon the deposit of the stock securities aforesaid, in his office, shall give a certified statement, directed to the Secretary of State, setting forth the name of the company, the amount of its capital stock, the amount and description of its stock securities, and the principal place of business of such company.

Certificate of incorporation.

SEC. 14. Such statement shall be filed in the office of the Secretary of State, and that officer shall give to such company or authorized agent thereof a certificate of incorporation, under his seal of office, declaring the corporate name of such company, the amount of their capital stock, and of securities deposited, and shall authorize such company from and after the date thereof, to issue policies of insurance, according to the true intent and meaning of this act; and such certificate shall be conclusive evidence of the validity of its organization.

Fees of auditor and secretary.

SEC. 15. The auditor shall be entitled to five dollars for the examination and statement, and the secretary to two dollars for the certificate of incorporation, which shall be paid by the company.

Auditor to have custody of stocks.

SEC. 16. The stocks thus deposited shall remain in the office of the Auditor of State, who is hereby charged with the custody of the same, and shall, upon the application of the company entitled thereto, give powers of attorney to receive the interest or dividends of such securities when due or made, except as hereinafter provided. The company holding the same may withdraw a portion of such stocks upon substituting other securities, of like class or nature, with the consent of the Auditor.

How proceeds of sales of securities shall be applied.

SEC. 17. Such securities shall constitute a guarantee fund, which shall be for the benefit of the insured in such company, and the proceeds of the sale thereof shall be applied as herein named, and in the following order and for no other purpose whatever:

First. To the payment of losses incurred by the assured, under any policy made by such company.

Second. The payment of laborers, artificers and other persons in the employ of such company.

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Third. The payment of the trusts held and reduced to possession by such company.

Fourth. The payment of all other debts and liabilities owing from such company; but the proceeds of such securities shall in all cases be applied rateably to the class first in order, and the remainder if any, to the other classes in their succession, as herein defined, and not otherwise.

Company to retain 5 per cent. on dividends for purchase of securities.

SEC. 18. Such company shall, before any dividends declared upon the capital stock thereof are paid over to the holders of the same, retain five per cent. on all such dividends, and within six months thereafter shall cause the same thus retained to be invested in solvent stocks, as heretofore provided, and deposit them with the Auditor of State. Such stocks shall be added to and constitute a part of the guarantee fund, but shall not be considered any portion of the capital stock of such company.

Proceedings when stocks depreciate.

SEC. 19. Whenever any of the stocks thus deposited have, in the estimation of the Auditor of State fallen below the value at which they were received, such officer shall give notice to the company making such deposite of such depreciation, and require the said company within sixty days from the date thereof, to deposit other stock securities to an amount equal to such depreciation or deficiency.

What may be insured.

SEC. 20. Every such company may make insurances upon vessels, freight, money, goods and effects, on the life or health of any person, or on money lent upon bottomry or respondentia; and they may also make insurance against fire, on any dwelling house, or other building, merchandise or other property within the United States.

Policies, how made, &c.

SEC. 21. All policies of insurance made by such companies, shall be subscribed by the president, or if he be dead, or unable from any cause, then by the vice-president, and countersigned by the secretary thereof. All losses arising under any policies so executed shall be adjusted and settled by the president and board of directors.

Payment of losses.

SEC. 22. Whenever such company shall be notified of any loss sustained on a policy of insurance issued by them, the company shall pay the amount so lost within sixty days after such notice, under a penalty of ten per centum damages for every thirty days such loss remains unpaid thereafter.

Payment of losses when cash has failed.

SEC. 23. Whenever the cash means of such company are insufficient to pay the losses incurred on any policy of insurance, the secretary thereof shall immediately notify the Auditor of State of such fact, and such auditor shall, within thirty days after such notice, if practicable, sell at either public or private sale, so much of said stock as shall be required to pay the losses as aforsaid. Such company shall not declare any dividends thereafter until the deficiency created by such sale has been made good by the nett earnings of the corporation, and the same is converted into

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stocks and deposited with the Auditor as hereinbefore provided; but such Auditor or any stockholder of such company shall not directly or indirectly be the purchaser of any of the stocks sold in conformity to the provisions of this act. Whenever, by a vote of the directors, as specified in section second, the capital stock in such company is increased, one half of such increase shall be invested in stocks as aforesaid, and deposited with the Auditor of State, within twelve months from the date of the order or resolution of such board of directors, and such deposite shall be accompanied with a statement under oath, signed by a majority of such directors, that the increased capital is paid into the treasury of such company, or secured to be paid in, and it shall be the duty of the auditor in like manner as upon the original deposite and statement of such company, to certify the same to the Secretary of State, whose certificate shall be evidence of the increase of such capital stock.

Increase of stock, how invested.

SEC. 24. Such companies shall not, directly or indirectly, deal or trade in buying or selling goods, wares, merchandise, (stocks,) or other commodities whatever, except as herein provided.

Companies not to trade in merchandize, &c.

SEC. 25. The Auditor of State shall keep a registry of stocks, in which he shall note the date, description, to whom, and by what company issued, the amount thereof and of the same. He shall receive for his services one dollar for every power of attorney, the half of one per cent. on all stocks sold by him, and ten cents per hundred words for all copies of records, and all records made in the performance of the duties herein enjoined, which fees shall be paid him by the proper company.

Registry of stocks.

SEC. 26. The board of directors of every such company shall, by the first Monday in January of each year, file with the Auditor of State a statement verified by oath and signed by a majority of them, which shall be attested by the secretary, setting forth the amount of capital stock and how the same is invested; the number of policies issued and the amount insured; the nature and kind of risks taken; the losses sustained and the condition of the guarantee fund; and shall publish the same in some paper printed in the State nearest to their principal office in business.

Annual statement of directors.

SEC. 27. If such company fail to report as provided in the preceding section, or shall fail to deposit additional stock securities as hereinbefore provided, when notified so to do by the Auditor of State, or to deposit stocks created by the five per cent. assessment upon dividends as required by section eighteen, or if such company shall fail to pay losses to the assured upon any policy of insurance issued by them, within sixty days notice of the same, unless the payment is contested, or the auditor is properly notified of the insufficiency of cash means to pay such losses as hereinbefore provided; or if the guarantee fund is exhausted or inadequate to meet

On failure of company in certain cases, auditor to notify prosecutor.

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losses, the Auditor of State shall, in either such case of neglect or failure or cause specified, notify the prosecuting attorney of the circuit court, in the county, in which the principal office of such company is situate of the facts in relation thereto.

Duty of prosecutor.

SEC. 28. Such prosecuting attorney shall file an information in the name of the State of Indiana with the clerk of the circuit court in such county, requiring such company to show cause why their rights of incorporation herein derived shall not be forfeited; and notice of such proceedings shall be given by proper process upon the secretary of such company at least ten days prior to the term of such court or in his absence upon the president thereof, or if the president be absent, then by publication of notice for three weeks successively before the commencement of such term in any newspaper printed in such county, or if none, then in a newspaper in this State nearest thereto.

Hearing, &c.

SEC. 29. Upon the hearing of such cause, if the court shall give judgment against the company, such court shall appoint some disinterested person as receiver, who shall give bond with sureties in the penal sum as the court may direct, and thereupon shall immediately take possession of the assets, both real and and personal of such company.

Auditor may deliver stocks to receiver.

SEC. 30. The Auditor of State shall upon the proper demand of the receiver deliver to him the stocks of such company deposited in his office, but the order of such delivery shall be made by the court, and a copy of such order certified by the clerk thereof, shall be first served upon such auditor by the receiver.

Conversion of assets into money, &c.

SEC. 31. The court shall make such order, from time to time in the premises, not inconsistent with this act, for the conversion of such assets into money, and the distribution thereof, among the creditors of such company, as shall best conduce to justice and right; but such distribution shall conform to the provisions of section seventeen, and the entire assets shall be paid to creditors in the order there directed.

Report and compensation of receiver.

SEC. 32. The receiver shall make report at each and every term of the said circuit court of his doings in all matters relating to his trust, and shall at the term next following his appointment, report specifically the kind and amount of all assets in his hands, and their probable value. In the final settlement of his account the court shall direct the payment to him of such sums out of the assetts, as shall be deemed an equitable compensation for his services.

No company shall issue bank notes.

SEC. 33. Nothing in this act shall confer in any insurance company, the right to issue notes similar to bank notes for the purpose of a circulating medium.

Individual liability in certain case.

SEC. 34. If any company shall be under liability for losses, to an amount equal to three-fourths of their capital stock, and the president and directors, with knowledge of

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the same, shall make new or further insurance, the estates of such assenting directors shall be jointly and severally liable for the amount of any loss which shall take place under such insurance, and whenever the means of such company are exhausted, the estates of stockholders shall, for all losses, be liable to an amount equal to their respective shares of the capital stock.

Risks.

SEC. 35. No company shall take, on any one risk, of whatever nature, a sum exceeding one-tenth part of their capital actually paid in.

Stockholders, when liable for stock not paid in.

SEC. 36. In case of any loss whereby the capital stock of any company shall be lessened before all the instalments are paid in, each stockholder's estate shall be held liable for the instalments thus unpaid, at the time of such loss; and no dividend shall thereafter be made, until a sum arising from the profits out of the business of the company, or otherwise contributed, equal to such diminution, shall have been added to the capital.

Triennial statement.

SEC. 37. Once in every three years, and oftener if required by the stockholders, the directors shall lay before them at a meeting, an exact and detailed statement of the profits, if any there be, particularizing the losses sustained, and dividends made, and deducting them therefrom.

Mutual Fire Insurance Companies.

Powers.

SEC. 38. All mutual fire insurance companies, and all officers by them elected, may exercise the powers, and shall be subject to the duties and liabilities contained in the foregoing sections of this act, except as herein provided.

Election of officers.

SEC. 39. Every such corporation shall annually elect a secretary, and not less than five directors, and the directors, in like manner, shall elect a president and vice president, as heretofore provided in the case of other insurance companies, and shall also elect a treasurer, who shall give bond in such sum as such directors shall order. No one member shall be allowed more than five votes at any election; but absent members may vote by proxy, authorized in writing.

Record of votes, policies, &c.

SEC. 40. There shall be kept a true record of all the votes of the corporation, and of the directors, and of all policies issued by the company, and of all assignments of such policies assented to by them, which shall be open to the inspection of any person interested therein.

Tenure of office.

SEC. 41. All the officers of such corporation shall hold their offices one year, and until others are chosen and qualified, and vacancies may be filled by a special election.

When company may insure.

SEC. 42. When the sum of one hundred thousand dollars shall be subscribed to be insured by any such company, and proof of the same is furnished to the Auditor of State, the books containing such subscriptions, verified by the affidavit of the Secretary, and examined and approved by him, as evi-

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denced by his certificate, such company may issue for a term not exceeding seven years, upon any buildings and the contents thereof, and such only, within this State, any amount within three fourths of the value thereof.

Policies, how made.

SEC. 43. All policies of insurance made by such corporation shall be subscribed by the president, and countersigned by the secretary, and shall be binding upon the corporation as if executed under their corporate seal.

Membership.

SEC. 44. Every person insured by any such company shall be a member thereof, as long as he shall be so insured.

Members to give note.

SEC. 45. Every person who shall become a member of such company shall, before he receives his policy, deposit his promissory note as a premium note, for such sum as may be agreed upon, on which note he shall pay not less than five per cent. immediately upon its delivery and the balance of such note shall be payable in part or in whole, when, on any assessment made, the directors shall require the same.

Funds, how invested and appropriated, &c.

SEC. 46. The funds of every such corporation shall be invested in stocks, or loaned on security, as the directors may order, and shall be appropriated, first, to pay the expenses of the corporation; and then to pay the damages which any member may be entitled to recover in his policy; and if any member shall have a just claim on the corporation, founded on a policy issued by them, exceeding the amount of their then existing funds, exclusive of deposit notes given by the members, the directors shall forthwith assess such sum as may be necessary to pay the same, upon the members, in proportion to the amount of their premiums and deposites severally for seven years; but no member shall be liable to pay in the whole more than the amount of his premium and deposite note.

Statement necessary before assessment on notes.

SEC. 47. Before the company shall make any assessment on the premium notes for alleged losses, the president and a majority of the directors shall make a statement verified by their oath, exhibiting the amount and nature of the loss sustained; of cash means and premium notes on hand, and the gross amount of the assessment proposed to be levied.

Directors, when personally liable.

SEC. 48. Whenever sufficient goods or estate of any such corporation cannot be found to satisfy an execution issued against them upon a judgment recovered on a policy by them made, and the said corporation have goods or estate to satisfy such execution, and the directors shall neglect or refuse to pay the same, or if the directors shall for thirty days after the rendition of such judgment, refuse or neglect to make such an assessment as they may be authorized to make therefor, and to deliver the same to the treasurer for collection, or fail to apply such assessment, when collected, towards satisfying such execution; then, in either of the cases aforesaid, the directors shall be personally liable for the whole amount of said execution.

Recovery.

SEC. 49. Whenever the directors or treasurer shall be liable by the provisions of the two previous sections, the

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judgment creditor or claimant may recover the same in an action at law, in courts having jurisdiction; and any director who shall voluntarily, or by compulsion, pay such judgment or claim, shall have an action at law for a contribution against any other director, for his due proportion thereof.

Treasurer, when liable.

SEC. 50. Whenever the treasurer of such corporation shall neglect or refuse to collect any assessment in his hands for that purpose, and to apply the proceeds of the same to discharge the claim for which such assessment was made, he shall, in his [private] capacity, be liable to the complainant for the aggregate amount of such assessment.

Policy to be lien on real estate for payment of note.

SEC. 51. Every policy made by such corporation shall of itself create a lien on the interest of the person insured, in the building so insured, and in the land upon which the same is situate, for securing the payment of his deposit note, any sums which he may be assessed, on account of such policy: *Provided*, The extent of such liability, and the intention of the corporation to rely upon such lien, is expressed in the policy; or upon the alienation of the estate to a bona fide purchaser, the lien shall cease, as to all losses which shall thereafter happen, unless the policy is continued in force by consent of the purchaser.

Proviso.

Demand of payment.

SEC. 52. If it shall become necessary to resort to such lien for the payment of any sum secured thereby, the treasurer of the corporation shall demand [payment] thereof from the assured, or his legal representatives, and also from any tenant in possession of the insured premises, setting forth in writing the sum due; and, if the same is not paid, the corporation may institute an action at law, and levy any execution issued on such action upon the estate subject to the lien.

Officer may sell, owner may redeem.

SEC. 53. The officer making the levy may sell first the rents and profits for not more than five years, the whole, or any part thereof, at such execution sale, and shall pay over the balance, if any, after satisfying the judgment and costs of execution to the defendant in such action; but the owner shall have the right to redeem the same, within one year thereafter, by tendering to the treasurer of the company the amount of judgment and costs, and interest accruing thereon.

Right of member when policy is out.

SEC. 54. Every member of such corporation shall, at the expiration of his policy, have the right to a share of the funds then remaining, after all expenses and losses then incurred have been deducted, in proportion to the sums by him actually paid, on account of such policy.

Annual report to auditor.

SEC. 55. The directors of such company, or a majority of them, shall, in January of each year, make a report verified by their oath, and attested by the secretary of such company, stating in full the amount of their capital stock, of premium notes, and the assessments made thereon, of cash means on hand other than premium notes; of the amount insured, and losses on the same, and generally of the

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indebtedness and resources of the company, and file the same with the Auditor of State, and publish a copy of the same in a newspaper printed in that State and nearest their principal office of business. If such company shall fail to make such report, the same proceedings shall be had as in case of other insurance companies.

Foreign Insurance Companies and their Agents.

Agent of foreign company.

SEC. 56. Every person who shall undertake to act as an insurance agent for any company not incorporated under the laws of this State, shall first deposit with the recorder of the county in which he proposes to establish his agency, an authenticated copy of a resolution or order of the board of directors of such company, authorizing any citizen or resident of Indiana, having a claim growing out of a contract of insurance made with such agent therein, to sue for the same in any court of this State, and consenting that service of process on such agent shall have the same force and effect as if served upon the president and directors of such company; and he shall also file an authenticated copy of his commission or power of attorney under which he claims to act as such agent; and any insurance made, or procured to be made by such agent, or person acting in behalf, or as the medium of any foreign insurance company, contrary to the provisions of this section, shall be void.

SEC. 57. That all special acts of incorporation for insurance companies heretofore enacted and under which no such company has been organized, nor measures taken to effect an organization under the same, be and they are hereby repealed.

CHAPTER 55.

AN ACT regarding Inspectors of Salt, Beef, Pork, Flour, Tobacco and Hay.

[APPROVED JUNE 12, 1852.]

Appointment and duty of inspectors.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the board of county commissioners in any county, may appoint inspectors, to serve during four years, unless sooner removed by such board, to inspect within the said county when required, the following articles: salt, beef, pork, flour, tobacco and hay.

Brand.

SEC. 2. All barrels, hogsheads, and bales inspected shall be branded with the name and residence of the inspector.

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Brand on salt.

SEC. 3. An inspector of salt shall brand on one end of the barrel the quantity, whether first, second or third rate, also the weight, specifying gross, tare and net.

Weight, inspection, and brand of flour.

SEC. 4. The weight of flour in each barrel shall be one hundred and ninety-six pounds. It shall be examined with a three-quarter inch barrel augur, and shall be marked of three qualities, the first to be branded "superfine," the second "fine," and the third "coarse."

Weight and brand of beef and pork.

SEC. 5. The weight of beef or pork in each barrel shall be two hundred pounds. According to the quality and usages of trade, beef shall be branded "mess beef," and "prime beef;" and pork shall be branded "mess pork," "prime pork," and "cargo pork."

Brand on damaged article.

SEC. 6. All flour, beef or pork found musty, sour, tainted or otherwise unfit for market, shall be branded with the word "condemned."

Inspection and brand of tobacco.

SEC. 7. Hogsheads of tobacco shall be inspected by breaking bulk in at least two places, shall be branded with the gross, tare and net weight, and with the quality, whether first, second, or third rate, and headed and hooped up by the inspector. If found not good, sound and merchantable, the hogshead shall be branded "not passed."

Brand on hay.

SEC. 8. The weight, in pounds, and the quality, determined according to the usages of trade, shall be branded on each bale of hay.

Board may authorize purchase of hay scales.

SEC. 9. Such boards may authorize inspectors of hay to procure, at expense of the county, suitable hay scales.

Inspector's oath and bond.

SEC. 10. Inspectors, before entering on the duties of office, shall give bond to the satisfaction of such board, conditioned for the faithful discharge of their duties; and shall file the same in the county clerk's office; and shall also take an oath of office.

Inspector not to deal in articles inspected.

SEC. 11. An inspector shall not deal in the article he is authorized to inspect, except that he may receive it in payment of a debt, or raise or cultivate the same, and sell the same when raised or cultivated by himself.

Fees.

SEC. 12. Inspectors shall receive, whether the article inspected be passed or not, the following fees:

For each barrel of salt, two cents.

For each barrel of flour, three cents.

For each barrel of beef or pork, thirty-five cents.

For each hogshead of tobacco, including cooperage, seventy-five cents.

For each bale of hay, five cents.

Fees are lien on article.

SEC. 13. Inspectors' fees shall be a lien on the article inspected.

Board may make further regulations.

SEC. 14. The board of county commissioners may make such further regulations in regard to inspectors as to them may seem necessary.

Form of oath

SEC. 15. An inspector's oath shall be substantially as follows: "I, ——— ———, do solemnly swear (or affirm)

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that whenever called on, I will diligently examine all (here name the article) submitted to me for inspection, and that I will not pass any that is not sound, in good condition and fit for market; that I will brand all barrels (or hogsheads, or bales, as the case may be,) according to quality, to the best of my judgment; that I will not condemn any article that is sound, in good condition and fit for market; that I will not deal in any (here insert the article) except as by the law regarding inspectors permitted; and that I will impartially discharge the duties of inspector."

CHAPTER 56.

AN ACT to regulate visiting the Indiana Hospital for the Insane.

[APPROVED JANUARY 12, 1852.]

Persons may visit hospital every day, Sunday excepted, between the hours of two and five P. M.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That every person or persons wishing to visit the Hospital for the Insane, may hereafter visit the wards of said hospital, subject to such rules, regulations and restrictions as the superintendent thereof may, in his discretion prescribe or direct, on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday of each week, between the hours of two o'clock, P. M. and five o'clock, P. M. on such days; and upon no other day, and at no other time than on the days, and between the hours, aforesaid: *Provided however*, that said hospital, and every department thereof, shall be at all times subject to the immediate inspection or examination of the board of commissioners, or any member thereof, and all committees of either branch of the legislature, charged with any duty or inquiry in relation to said hospital.

When act to take effect.

SEC. 2. This act shall take effect and be in force from and after its publication, and circulation in the several counties of the State.

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CHAPTER 57.

AN ACT concerning Interest on Money.

[APPROVED MAY 27, 1852.]

Rate of interest.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, Interest upon the loan or forbearance of money, goods, or things in action, shall be at the rate of six dollars a year, upon one hundred dollars; and no greater rate of interest shall be taken, directly or indirectly. But it may be taken yearly, or for any shorter period, in advance, if so expressly agreed.*

Judgments.

SEC. 2. Interest on a judgment or decree, for money, shall be from the date of signing, until the same be satisfied.

On what interest is allowed.

SEC. 3. On money due on any instrument in writing, or on settlement of account, from the day the balance shall have been agreed upon, on money received to the use of another, and retained without the owner's consent, express or implied, from the receipt thereof; and on money loaned, or due and withheld by unreasonable delay of payment, interest shall be allowed.†

*A note for the payment of a certain sum on a specified day, with interest from the date if not punctually paid, draws interest from date if default is made in the payment.—*Gully et al.* vs. *Remy*, 1 Blackf. 69. *Horner* vs. *Hunt*, *Ib.* 213. *Wernwag et al.* vs. *Mothershead et al.*, 3 Blackf. 401.

†It is a general rule that interest is not allowable on the open, unliquidated account of merchants.—*Shewel* vs. *Givan*, 2 Blackf. 312.

Witnesses are not admissible to prove a custom of merchants in the city of another State, allowing them to charge interest on their accounts, when the courts of that State have refused to recognize the custom.—*Ibid.*

The statute gives interest for money had and received, where the money is retained without the owner's knowledge, or where it is retained after it has been demanded. But interest is not recoverable in other cases, on account, for money had and received.—*Hawkins* vs. *Johnson*, 4 Blackf. 21.

If a new contract be made respecting money previously lent, and new security be given, the interest should be calculated up to the time of the new contract, and added to the principal; but this calculation is not to be made at every agreement for forbearance of payments, where no change is made in the securities.—*Harvey* vs. *Crawford et al.*, 2 Blackf. 43.

When a payment in part of a demand is made, and the payment exceeds the interest then due, the payment is applied in discharge of the interest, and the surplus goes to the credit of the principal. But if the payment is less than the interest due, the principal remains on interest until payments exceeding the interest are made, and then the payments are applied as above mentioned. —*Wasson* vs. *Gould et al.* 3 Blackf. 18. *Harvey* vs. *Crawford et al.*, 2 Blackf. 43.

A. gave his promissory note to B. for an antecedent debt, and afterwards confessed a judgment, without any qualification, in favor of the payee for the amount of the note and interest then due. *Held*, that B. could not be relieved in chancery from the interest charged on the note and included in the judgment, on the ground that, by a parol contract when the note was given, on interest was to be charged.—*Stutsman* vs. *Stutsman*, 3 Blackf. 231.

A decree determing the amount due on a mortgage, and authorizing a sale of the mortgaged premises, draws interest at the rate of 6 per cent. per annum, though the debt previously drew a higher rate.—*Wernwag* vs. *Brown et al.*, 3 Blackf. 457.

A plaintiff obtained a judgment before a justice on a note at a higher rate of interest than six per cent. The defendant appealed. *Held*, that the plaintiff

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What to be recovered when illegal interest is allowed.

SEC. 4. If a greater rate of interest than is hereinbefore allowed, shall be contracted for, or received, or reserved, the contract shall not therefore be void; but if in any action on such contract, proof be made, that illegal interest has been directly or indirectly contracted for, or taken, or reserved, the defendant shall recover costs; and the plaintiff shall recover only his principal without interest; and if interest shall have been paid thereon, judgment shall go for the principal, deducting interest paid.*

Illegal interest may be recovered back.

SEC. 5. If interest be paid, or reserved at a higher rate than by law allowed, the payer or his personal representative

was entitled to interest up to the time of recovery in the circuit court at the rate mentioned in the note.—*Bates* vs. *Wernwag*, 4 Blackf. 272.

In rendering judgment on a note payable at a certain time after date, with ten per cent. interest, it is proper to allow interest on the note at that rate from its date to the time of judgment.—*Kilgore* vs. *Powers*, 5 Blackf. 22.

The holder of a bond for the payment of a specific sum with interest, may sue in debt for the principal alone, and need not notice in his declaration, his contract for interest.—*McClure et al.* vs. *Cole*, 6 Blackf. 290.

The sinking fund commissioners cannot recover compound interest.—*Niles* vs. *Board of Com.*, 8 Blackf. 158.

It is a general rule that compound interest cannot be recovered, except when after simple interest becomes due, there is an agreement in consideration of forbearance, that on the interest due interest should be afterwards allowed. But there are cases where trustees are liable to pay compound interest.—*Ibid.*

If a creditor receive the principal sum due him, he cannot afterwards sue for the interest.—*Comparet* vs. *Ewing et al.*, 8 Blackf. 328.

If the vendee of land who has contracted to pay the purchase money at a certain time, and has taken possession of the land, cannot show a readiness to pay the money at the time it became due, he is liable for interest on it from that time.—*Conwell* vs. *Claypool*, 8 Blackf. 124.

*A contract made usurious by mistake is not within the statute for usury.—*Sutton et al.* vs. *Fletcher*, 6 Blackf. 362.

An action for money had and received, lies to recover an excess of interest paid on a usurious contract.—*The State Bank* vs. *Ensminger*, 7 Blackf. 105.

In such suit against the State Bank, the plaintiff proved that the bank had discounted several notes for him, and retained, under the name of exchange, a certain sum over and above legal interest; that the bank had discounted other notes for him during several years, after these charged with exchange were payable; and that the plaintiff's bank account was balanced. *Held*, that it might be inferred that the notes charged with exchange were paid. *Held*, also, that the retaining said sum over and above legal interest, as exchange, was usury.—*Ibid.*

The plaintiff in such suit offered in evidence a copy of so much of the discount book of the bank, as showed the usury complained of, the original not being produced on notice. The clerk of the bank, who had made the plaintiff's copy on application, testified that, having made it in a hurry, he could not be certain as to its accuracy. *Held*, that the copy was legal evidence.—*Ibid.*

The act of 1843 respecting interest, embraces contracts made before as well as those after its passage, and is constitutional.—*Audrews* vs. *Russell et al.*, 7 Blackf. 474; 8 Blackf. 371.

Held, that if a promissory note for $350, made by A. to B., without consideration, and indorsed by the latter, for the purpose of procuring money on it, was purchased of them by C., with notice of the facts, for $300, the transaction was usurious.—*Hays* vs. *Walker*, 7 Blackf. 540. But the $300 might be recovered back by C.—*Ibid.* See *Haas* vs. *Flint*, 8 Blackf. 67.

A mortgage was given to secure the payment of a certain sum at a certain time with legal interest, containing an agreement that if the principal and interest should not be paid punctually, the land should be sold to pay the same with *five per cent.* damages thereon, and all costs. *Held*, that the contract was not usurious.—*Gambril et al.* vs. *Doe d. Rose*, 8 Blackf. 140.

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may recover such interest, with ten per centum damages thereon, by suit, if commenced within one year after payment thereof.

The person charged may be required to answer on oath.

SEC. 6. Any person charged with taking illegal interest, may be required to answer on oath in any civil proceeding.

Relief as to interest, without tender of principal.

SEC. 7. Relief to a complainant, in case of a usurious loan, may be given, without payment or tender, by him, of the principal sum.

Agent or officer may be required to testify.

SEC. 8. Any officer or agent of a person or corporation, whether interested or not, may be summoned as witness, in an action for usury against such person or corporation, and required to disclose all the facts of the case; but the testimony of such witness, or the answer of a party as required in section six, shall not be used against such witness or party in any criminal prosecution for usury.

When no period is fixed, rate deemed to be by the year.

SEC. 9. When, in any law, or in any instrument of writing, specifying a rate of interest, where no period of time is mentioned for which such rate is to be calculated, it shall be deemed to be by the year.

Public funds, &c.

SEC. 10. The rate of interest fixed by this act, shall not affect loans of public funds, nor interest on purchase money of canal, college, school or saline lands.

CHAPTER 58.

AN ACT concerning County Prisons.

[APPROVED MAY 27, 1852.]

County prison.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be established and kept in every county, by authority of the board of county commissioners, and at the expense of the county, a prison for the safe keeping of prisoners lawfully committed.

Grand jury shall inspect prison.

SEC. 2. The grand jury, at each term of the circuit court, shall make personal inspection of the condition of the county prison, as to the sufficiency of the same for the safe keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term; and the court shall give this duty in special charge to such grand jury, and it shall be imperative upon the board of commissioners to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation of the grand jury.

Duties of the sheriff in relation thereto.

SEC. 3. The sheriff of the county, by himself or deputy, shall keep the jail, and shall be responsible for the manner

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in which the same is kept; he shall keep separate rooms for the sexes, except where they are lawfully married; he shall provide proper meat, drink, and fuel for prisoners, if they have no other convenient way of supplying themselves.

Cost of keeping prisoners in civil cases.

SEC. 4. The cost of keeping a defendant imprisoned by civil process shall be taxed as costs against the plaintiff therein, at the rate of thirty cents per day, and if on demand made, such plaintiff shall fail to pay the same, the defendant may be discharged, but such costs may afterwards be recovered against the defendant.

Same in criminal cases.

SEC. 5. When a prisoner is committed for crime, or in any suit on behalf of the State, the county board shall allow the sheriff his reasonable charge for supplying such prisoner.

Copy of process to be retained.

SEC. 6. When a prisoner is confined by virtue of any process, directed to the sheriff, and which shall require to be returned to the court whence it issued, such sheriff shall keep a copy of the same, together with his return made thereon; which copy, duly certified by such sheriff, shall be *prima facie* evidence of his right to retain such prisoner in custody.

Instruments, or copies of commitment to be filed, &c.

SEC. 7. All instruments of every kind, or attested copies thereof, by which a prisoner is committed, or liberated, shall be regularly endorsed and filed, and safely kept in a suitable box by such sheriff, or by his deputy acting as jailor.

Box to be delivered to successor.

SEC. 8. Such box, with its contents, shall be delivered to the successor of the officer having charge of the prison.

Recommitment to bar an action for an escape.

SEC. 9. If any prisoner confined on civil process shall violently escape from prison, without the connivance of the jailor, and such prisoner shall be recommitted to the prison whence he escaped, within three months next after such escape, such recommitment shall operate to bar any recovery against the sheriff for such escape, except for the costs of any action that shall have been previously commenced against him therefor.*

*A *ca. sa.* on a replevin-bond in the supreme court, was, by the sheriff thereof, to whom it was directed, sent to the sheriff of Jackson county, where the execution-defendant resided. The sheriff of that county arrested the defendant, and afterwards suffered him to escape. *Held*, that under the statute, the sheriff of the supreme court was not liable for the escape.—*McGruder* vs. *Russell*, 2 Blackf. 18.

The sheriff of Jackson county, after the escape, retook the defendant, and brought him to the seat of government where the supreme court sits. *Held*, that the removal of the defendant out of the county in which he was arrested, was an escape.—*Ibid.*

A capias *ad respondendum* was issued against *Taylor* and *Searles* requiring bail. Upon this writ the sheriff arrested *David S. Taylor*, but took no bail and permitted him to escape. *Held*, that the sheriff committed no breach of duty in this discharge of *Taylor*, though the person intended by the name of Taylor in the writ was *David S. Taylor*.—*The Governor* vs. *Stribling et al.*, 2 Blackf. 24.

An action of debt lies in this State against a sheriff for an escape on execution; the English statutes authorizing such an action being in force here.—*Gwinn* vs. *Hubbard*, 3 Blackf. 14.

The sheriff is liable for the escape of a party taken on execution in a civil action, and legally in his custody, though there be no jail in the county.—*Ibid.*

A *scire facias* cannot issue, either at common law or by statute, against a sheriff or constable for an escape.—*Hull* vs. *Johnson*, 3 Blackf. 363.

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SEC. 10. If judgment in any such action for escape shall have been rendered against the sheriff before the expiration of three months, such recommitment of the prisoner as mentioned in the next preceding section, shall operate as a satisfaction of all such judgment, except the costs. The recommitment to operate as a satisfaction of a judgment for an escape.

SEC. 11. When there is no sufficient prison in any county wherein any criminal offence shall have been committed, any judge of the circuit or common pleas court of such county, upon application of the sheriff, may order any person charged with a criminal offence, and ordered to be committed to prison, to be sent to the jail of the county nearest, having a sufficient jail; and the sheriff of such nearest county shall, on exhibit of such judge's order, receive and keep in custody in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which such prisoner was sent; and the said sheriff shall, upon the order of the circuit court, or a judge of court of common pleas, re-deliver such prisoner when demanded. When prisoners to be sent to the jail of another county; costs thereof, &c.

SEC. 12. Any county jail may be used for the safe keeping of any fugitive from justice or labor, in this State, in accordance with the provisions of any act of Congress, and the jailor shall, in this case, be entitled to reasonable compensation for support and custody of such fugitive, from the officer having him in custody. Jail may be used for fugitives from justice and labor.

SEC. 13. Juvenile prisoners shall be treated with humanity and in a manner calculated to promote their reformation; they shall be kept, if the jail will admit of it, in apartments separate from those containing more experienced and hardened criminals; the visits of parents, guardians, and friends who desire to exert a moral influence over them shall, at all reasonable times, be permitted. Juvenile prisoners.

The existence of a judgment must be averred and proven in an action for an escape.—*Ibid.* See also, *The State* vs. *Beem et al.*, 3 Blackf. 222.

As to prison limits, see *Spader et al.* vs. *Frost et al.*, 4 Blackf. 190; *Buford* vs. *Ganson*, 5 Blackf. 585; 6 Blackf. 280; 7 Blackf. 423. As to jurisdiction of justices in an action for an escape, see *Forsha* vs. *Watkins*, 4 Blackf. 520.

As to amount of damages to be recovered of a constable where the debt has been paid after the escape, but before judgment therefor, see title constable, where *The State* vs. *Miller et al.*, 5 Blackf. 381, is cited.

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CHAPTER 59.

AN ACT to provide for publishing the Acts and Joint Resolutions of the General Assembly.

[APPROVED JANUARY 3, 1852.]

Printing, binding and distribution of laws.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the acts and joint resolutions passed at each session of the General Assembly, shall be printed and bound in volumes, and shall be deposited as soon as practicable, in the several offices of the clerks of the circuit courts, and each clerk shall, at the time of such deposite, make an entry thereof in the order book of such court, and the acts so deposited shall take effect and be in force in each county respectively from the day of depositing as aforesaid.

CHAPTER 60.

AN ACT regulating the election and duties of State Librarian.

[APPROVED MAY 27, 1852.]

When and how elected.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be elected at the session of 1853, by a joint vote of a majority of the General Assembly, a State Librarian, who shall go into office at the expiration of the term of service of the present incumbent.

Same.

SEC. 2. An election shall be held for the same purpose every two years thereafter.

Bond.

SEC. 3. The librarian shall, before entering on his duties, give bond and security to the acceptance of the Treasurer of State, in the penal sum of two thousand dollars; which bond shall be filed in the office of the Secretary of State.

To keep library and State-House.

SEC. 4. Such librarian shall be keeper of the State Library, and it shall be his duty to take proper care of the State House with all its furniture and appendages, and also, at all times, of the grounds, fences, trees, and all appurtenances belonging to the State House square; and to cause the trees and shrubs on said square to be pruned and the grass to be mowed and kept free from weeds.

Carpets to be taken up.

SEC. 5. The carpets throughout the State House, shall be taken up immediately after the adjournment of the legislature; and cleaned and replaced prior its next meeting.

State-House to be kept open.

SEC. 6. The State House shall be kept open to visiters every day, (Sundays excepted,) during the recess of the legislature.

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Repairs.

SEC. 7. The State Librarian may, with the consent of the Auditor, Treasurer, and Secretary of State, cause to be made all necessary repairs to the said State House, furniture, grounds, fences and appurtenances. And upon a statement of the items of such repair, and their value, approved and certified by the State Librarian, the auditor may issue a warrant for the amount on the treasury in favor of the person who shall have performed the services.

Preparation of halls.

SEC. 8. The librarian shall cause to be prepared the legislative halls for the meetings of the General Assembly, and have fires kept in the same for four days immediately preceding the commencement of each session.

Arrangement of books.

SEC. 9. The librarian shall keep the books arranged in a proper and convenient order, and shall preserve the same from moulding and from moths.

Library, when kept open.

SEC. 10. The library shall be kept open every day, Sundays and fourth of July excepted; during the session of the legislature, from nine o'clock till six, and during the recess, from nine o'clock till four.

By-laws.

SEC. 11. The librarian shall, with the consent of the Auditor, Treasurer, and Secretary of State, fix the time during which any authorized person may detain a book from the State Library; and shall make from time to time necessary by-laws for the government of said library, and a copy of such by-laws shall hang in a conspicuous place in the library, for inspection of visiters. And persons violating any of such by-laws, shall not be permitted to use such library for one year.

Who may use library.

SEC. 12. Said library shall be for the use of the members and officers of the legislature, all State officers, judges of the courts of the United States, and of this State, attorneys, editors, clergymen, physicians, professors and teachers of literary or scientific institutions, superintendents of public instruction, members of the State Board of Agriculture, officers of benevolent institutions, clerks of the supreme court, county clerks, treasurers and recorders, and all other persons who have been at any time entitled by law to the use of such library; and such strangers as the librarian may be willing to entrust with books at his own risk, when any of them shall be at the seat of government.

Person entitled to use cannot authorize other person to draw books.

SEC. 13. It shall not be lawful for any one having the use of the library to cause or permit another not having such use, to draw books, except for the use of the persons first mentioned. And any person so offending shall be liable to a penalty of five dollars for each offense.

Penalty for injury.

SEC. 14. Any person injuring a book, shall be liable for three-fold damage; and if the book injured or lost be one volume of a set, he shall be liable for the whole set; but, on paying for the same, he may take the broken set.

Entry-book; catalogue.

SEC. 15. The librarian shall keep proper books, in which he shall make entry of all books taken out, designating the

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name of the individual taking the same; also of books returned, and of all fines and penalties assessed and collected under the provisions of this act. He shall also keep a complete catalogue of the library, shall from time to time add thereto all books purchased; and erase therefrom all books lost or destroyed.

Report.

SEC. 16. The librarian shall report at each session of the legislature the condition of the library and a statement, by items, of expenditures made under this act.

Collection of fines.

SEC. 17. The librarian shall collect all fines and forfeitures accruing to the State Library, by suit or otherwise; and pay the same to the Treasurer of State, taking his receipt, and filing the same in the office of the Auditor of State, who shall charge the same to account of the Treasurer of State for the use of the library.

Annual expenditure, binding of laws, &c.

SEC. 18. There shall be expended annually by the librarian, with the advice and consent of the Secretary, Auditor, and Treasurer of State, the sum of four hundred dollars, for the increase of the State Library; and he shall procure the binding of copies of laws exchanged with the States and territories, not exceeding three copies of each; also the binding of at least six copies of the laws and joint resolutions passed at each session of the legislature, and of six copies of each of the journals of the Senate and of the House of Representatives; the laws to be bound in full binding, and the journals in half binding, with leather backs, and he shall also cause to be bound in half binding all newspapers published in this State, that have been or may be regularly forwarded to the State Library.

Laws and documents to be kept separate.

SEC. 19. All laws and law books, and all legislative journals and documents shall be kept separate from the rest of the library.

Documents to be collected.

SEC. 20. The librarian shall collect, annually, and preserve duplicate copies of the messages of the President of the United States, and of the governors of States; reports of heads of departments of the general and State governments, of the committee of ways and means of the several States, of the committees of Congress on general subjects; also, copies of the reports and proceedings of public societies for the promotion of agriculture, the mechanic arts, history, and literature; all of which may be bound.

Repair of rooms

SEC. 21. The librarian may, with the consent of the Auditor, Treasurer, and Secretary of State, make necessary alterations and repairs in the library rooms, and may, if necessary, appropriate one adjoining committee room, and cut a door from the library thereto.

Preservation of laws and journals.

SEC. 22. The librarian shall select from the journals and laws belonging to the State, twenty copies of the journals of the house for each year, ten copies of the journal of the Senate, ten copies of the documentary journals, thirty copies of the general laws, and fifteen copies of the local laws, for each

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year; and keep the same for use in the library; and shall carefully preserve, in boxes or otherwise, all remaining copies of the same.

Care of legislative papers.

SEC. 23. The librarian shall have charge of the legislative papers, which shall be delivered to him, at the close of each session, by the secretary of the senate and the clerk of the house, and shall keep, in good order, all bills introduced in either branch of the General Assembly; all petitions, memorials and remonstrances, each in its appropriate file; keeping the files of each house separately.

Certificate of expenses sufficient for auditor.

SEC. 24. That for all articles of stationery, lights, or other necessaries, procured under his direction, for the use of the General Assembly, and for all other expenses necessarily incurred by said librarian in discharge of his duties, his certificate shall be sufficient authority for the Auditor of State to issue a warrant thereon, chargeable to the appropriate account.

Documents for Liberia.

SEC. 25. The librarian may deliver to the agent for Indiana of the American Colonization Society, a single copy of any surplus public document not needed for the present or future wants of the State, to be sent to Liberia. And he may also exchange such surplus documents, with any State or foreign government.

Exchanges.

Librarian may sell certain documents.

SEC. 26. The librarian may sell or exchange, for the benefit of the State Library, any duplicate, imperfect, damaged or other work, not wanted for the use of the library.

Shall report names of persons not returning books.

SEC. 27. It shall be the duty of the librarian, in his annual report, to report the names of those who have obtained books from the library during the current year and have not returned them, and also the titles of the works not returned.

CHAPTER 61.

AN ACT declaring the Law governing this State.

[APPROVED MAY 31, 1852.]

Law governing the State.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the law governing this State is declared to be:

Constitution of U. S.

First. The constitution of the United States and of this State.

Statutes of the State.

Second. All statutes of General Assembly of the State, in force, and not inconsistent with such constitutions.

Statutes of the U. S.

Third. All statutes of the United States, in force, and relating to subjects over which Congress has power to legislate for the States, and not inconsistent with the constitution of the United States.

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Common law.

Fourth. The common law of England and statutes of the British Parliament, made in aid thereof, prior to the fourth year of the reign of James the first, (except the second section of the sixth chapter of forty-third Elizabeth—the eighth chapter of thirteenth Elizabeth, and the ninth chapter of thirty-seventh Henry the eighth,) and which are of a general nature, not local to that kingdom, and not inconsistent with the first, second, and third specifications of this section.

Certain offenses to be punished under statutes of the State.

SEC. 2. Crimes and misdemeanors shall be defined, and punishment therefor fixed, by statutes of this State, and not otherwise.

CHAPTER 62.

AN ACT for the protection of Lands held by, or mortgaged to the State, and concerning charges thereon.

[APPROVED MAY 4, 1852.]

Auditor of State may require sheriff to report trespass or waste.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Auditor of State may require the sheriff of any county, in which may lie lands belonging or mortgaged to the State, to examine and report to him any trespass, or waste done or permitted, whether by the mortgagor, purchaser, or other person, to the probable injury of the State.

May direct prosecution.

SEC. 2. On receiving such report, such auditor may direct the prosecuting attorney for the proper circuit, to commence and prosecute suit against such trespassers, for the penalty imposed by law; or, at his option, to institute criminal proceedings, or both.

Purchaser of forfeited lands.

SEC. 3. The purchaser of any lands mortgaged to the State, and sold on forfeiture, shall not confer on the purchaser, until final payment therefor be made, the right to cut upon such lands, any growing wood or timber, or to remove any building, stone, or other material, except as the same may be necessary for firewood on the premises, or for the erection of fences or buildings thereon, or in fairly improving such land for the purposes of cultivation.

Penalty for trespass.

SEC. 4. Every person who shall trespass on any land belonging to the State, and shall commit thereon wilful waste or injury, shall forfeit and pay three times the amount of injury done by him, or under his direction, and such amount shall not be assessed at less than ten dollars.

Damages, where paid.

SEC. 5. Such damages shall be paid into the treasury of the county wherein recovered, for the use of common schools therein.

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Charges on lands of State, how paid.

SEC. 6. All legal charges upon lands held by the State, shall be audited by the Auditor of State, and paid out of the State treasury, or other proper fund.

Sale of such land, when valid.

SEC. 7. No sale of such land on account of any such charge, shall be valid, unless, before sale payment of such charge shall have been demanded of the Auditor of State.

Purchaser.

SEC. 8. The purchaser of land mortgaged to the State and sold on account of a charge thereon, holds the same subject to the mortgage.

Proceedings to remove occupant from mortgaged land.

SEC. 9. When principal or interest due on any mortgage shall be unpaid, the Auditor of State may, at his option, cause notice to be given to the occupant to remove therefrom, and in case he fail to comply with such notice, the auditor shall issue his warrant to the sheriff of the county in which such land may lie, directing him to remove such occupant within ten days from the receipt of such precept; which duty such sheriff shall perform and for that purpose he shall have the same powers as in the execution of any writ for the restitution of land.

Same.

SEC. 10. The sheriff shall retain such warrant in his hands, and if any person so removed shall return to reside upon such lands without the consent of the auditor, such person shall be forthwith removed by the sheriff, pursuant to the warrant.

Sheriff's costs.

SEC. 11. Costs shall be charged by such sheriff as in other cases, and collected on such warrant by levy and sale of any property of the defendant, found within the county.

Remedy of purchaser for removal of occupant.

SEC. 12. The purchaser of land sold by the State for failure to pay principal or interest, shall be entitled to the same remedy for removal of the occupant from any such land as in the preceding sections provided, and on the application of such purchaser, verified by oath, setting forth that such occupant has failed to remove on demand made, the auditor shall issue his warrant accordingly.

Injunction.

SEC. 13. Injunctions to stay proceedings against said occupant may be granted as in other cases.

CHAPTER 63.

AN ACT for the incorporation of County Libraries.

[APPROVED JUNE 18, 1852.]

Libraries, how established.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, To establish and maintain a public library in each of the several counties, for the use of the inhabitants thereof, there shall be reserved ten per cent. of the net proceeds of all lots within the town, where the

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county seat is stiuate, sold as the property of such county, and ten per cent. upon all donations made to procure the location of such county seat; and the county commissioners shall make the necessary order for the collection and payment of the same.

County board may appropriate.

SEC. 2. The board of commissioners doing county business, may at their June session in each year, appropriate a sum not less than twenty, nor more than seventy-five dollars for the purchase of books, maps and charts for such library, and the same shall be paid to the treasurer of the library, by the treasurer of the county, upon the certificate of the auditor thereof.

Who to have care of library; their duties and liabilities.

SEC. 3. The clerk, auditor, and recorder shall have the charge of such library, and are hereby constituted trustees for that purpose. They shall elect one of their number treasurer, and a suitable person librarian, and shall prepare a proper room, with the necessary shelves, and cases, within some county office, or building when practicable, to place and safely keep such library. They shall cause all moneys appropriated or belonging to the library, to be expended in the purchase of books, charts and maps, and report to the board of county commissioners in June annually, the kind and number of books purchased, with the cost thereof. Each of said officers shall be liable on his official bond for the performance of duties herein required of him.

Who may use books.

SEC. 4. Every inhabitant of the county giving satisfactory evidence or security for the safe keeping and return of books, shall be entitled to take and use the same upon the proper application to the librarian. But no one person shall at the same time have more than two volumes of books, nor for a longer period than forty days, without returning such books to the library.

By-laws.

SEC. 5. The trustees shall establish by-laws, and rules for the regulation of such library, and the same shall be placed at a conspicuous point in the library room for the inspection of visiters. All fines or forfeitures accruing from the violation of such by-laws shall be recoverable in an action before any court of competent jurisdiction in the name of the State of Indiana, for the use of such library; and the librarian shall be a competent witness in such action, and the entries made upon his books, in relation to such library, shall be *prima facie* evidence of the things therein charged.

Duties of librarian.

SEC. 6. The librarian shall make an entry in a proper book, of each book or map taken, the time thereof, by whom and when returned. He shall also keep a registry of the fines and penalties assessed, and collect the same by suit or otherwise. At the June session of the board of county commissioners in each year, he shall report the condition of such library, the books added, or lost, within the preceding year, and the value of the same.

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CHAPTER 64.

AN ACT to establish Public Libraries.

[APPROVED FEBRUARY 16, 1852.]

Proceedings to establish library.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the inhabitants of any city, town, village or neighborhood, in this State, or any part of them, whenever they have subscribed the sum of fifty dollars or upwards towards the establishment of a public library, may assemble themselves for the purpose of holding an election for directors.

Same.

SEC. 2. If two-thirds of the subscribers are present, they may proceed to choose, by voice, a chairman who shall preside at that meeting, and a clerk who shall keep a record of the same.

Election of directors, &c.

SEC. 3. After a chairman and clerk are chosen, the shareholders may proceed to choose, by ballot, seven directors, and to agree upon a name by which their library shall be known, the directors shall appoint one of their number to be president at their meetings, who shall have no other than a casting vote.

Statement of proceedings.

SEC. 4. A true statement of the proceedings of such meeting, including the amount subscribed and the number of subscribers present at their meeting, shall be sworn or affirmed to before some justice of the peace of the county, by the chairman or the clerk provided for by the second section of this act, and filed in the recorder's office; and it shall be the duty of such justice to certify on such statement that it was sworn or affirmed to before him.

Recorder to record statement.

SEC. 5. The recorder of the county shall record the said statement on his book of record when required.

President and directors to be a body politic.

SEC. 6. After such statement shall be duly recorded, the president and directors, and their successors forever, shall be a body corporate and politic, to be known by such name as is registered in the recorder's office; they shall be capable in law and equity to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, person or persons whatsoever, in all manner of suits, actions, plaints, pleas, causes, and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic, may or can do.

Not to have banking privileges.

SEC. 7. Nothing contained in this act shall be so construed as to authorize any library company incorporated in this State, to issue notes or bills of credit payable to any person or persons on his or their order, or to bearer; nor to deal in any kind of bills of exchange, notes or due bills whatever.

Annual election of directors.

SEC. 8. Except the first election of directors, the annual election forever thereafter shall be held on the first Monday in January; but if any annual election should be omitted, the

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directors shall remain in power until the next annual election, and until successors shall be chosen.

By-laws.

SEC. 9. Such library or libraries shall be governed and regulated by such by-laws as may, from time to time, be made by the president and directors of the same, not inconsistent with the constitution and laws of this State, who shall have power to alter, amend, abolish, and renew, any such by-law or by-laws at pleasure.

President, &c., may make a seal, levy tax, &c.

SEC. 10. The president and directors shall have power to make a common seal, and the same to alter, break, change, or renew at pleasure, they shall have power to levy a tax on the shareholders, provided such tax do not exceed one dollar on each share in any one year; nothing, however, in this act shall be so construed as to prevent a majority of two-thirds of the shareholders, attending at their annual meeting, from increasing such tax to any sum not exceeding five dollars on each share in any one year; they shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

Majority to form quorum; their powers.

SEC. 11. A majority of the directors shall be necessary to form a quorum; they shall have power to fill vacancies that may happen in their own body; and the director or directors by them elected, shall serve until the next annual election thereafter, and until others are elected in their stead.

Same.

SEC. 12. They shall have power to receive, by donation, any books, moneys, papers, lands, or any other thing or things, and such donation, or the income or the interest thereof, shall be applied to no other purpose than the true interest and objects of the library on which it was bestowed, according to the true intent and meaning of this act.

Restriction as to value on hand.

SEC. 13. They shall not keep for a longer time than six months after receiving the same, more than the real value of five hundred dollars, land or any other property, except books and those things appertaining to a library.

CHAPTER 65.

AN ACT concerning licenses to vend foreign merchandize, to exhibit any caravan, menagerie, circus, rope and wire dancing, puppet show, and leger-demain.

[APPROVED JUNE 15, 1852.]

License to keep ferry—to peddler, circus &c., and broker.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana:* For license to keep a ferry there shall be paid to the proper county treasurer, not less than three nor more than fifty dollars; to traveling merchants and pedlers, who are not residents of this State, to vend foreign merchan-

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dize five dollars, where the capital employed does not exceed one thousand dollars; seven dollars and fifty cents for any amount over one thousand and not exceeding two thousand dollars; ten dollars for any amount over two thousand, and not exceeding five thousand dollars; and twenty dollars for any amount exceeding five thousand dollars, to be paid in each county, where they shall offer for sale any such merchandize except tea and coffee. To exhibit for pay any caravan, menagerie, circus, rope or wire dancing, legerdemain, or puppet shows, not less than five nor more than twenty-five dollars for each day's performance; to carry on the business of stock and exchange broker, in buying or selling stocks, bank notes, gold, silver, promissory notes, and bills of exchange, whether by individuals or corporations, one hundred dollars for one year.

Amount to be charged, how determined. License, how issued.

SEC. 2. In all cases of license herein specified, the board doing county business, if in session at the time any person shall apply therefor, shall determine the sum to be charged, but if such board be not in session, the treasurer of the county shall fix such sum, and whenever any person applying for any such license, shall pay to such treasurer such sum, he shall issue his certificate therefor, and when such certificate is filed with the auditor of such county, such auditor shall issue a license to the person applying therefor; and all sums so received shall be disposed of as is the county revenue of such county; but the board of commissioners of such county may at any term thereof fix the amount to be charged for such licenses, in accordance with the provisions of this act, and such treasurer shall be governed, in charging for such licenses thereafter, by the order of such board.

For what time to issue, &c.

SEC. 3. No such license shall be issued for a longer term than one year, and the person applying therefor in case of an application to vend foreign merchandize shall be interrogated on oath touching the amount of capital employed, and the term "merchandize," as used in this act shall be construed to mean any personal property.

Suit against person doing business without license, &c.

SEC. 4. If any person shall transact any business, or make any exhibition for which a license is required by this act without first procuriug such license, the treasurer of such county, or in his absence, the auditor thereof, shall institute suit against him before any justice of the peace of the county in the name of the board of commissioners thereof, and the measure of damages in such case shall be fourfold the amount of the maximum sum which by this act may be charged for the exercise of such business, or for such exhibition, and in all such cases, such justice of the peace shall have power to render judgment in any sum as herein provided, without reference to the amount, and upon such treasurer or auditor filing an affidavit before such justice that he is apprehensive that the person against whom such suit is instituted is about to leave the county, taking with him his personal estate to

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prevent the payment of such damages, such justice shall issue a writ of attachment to a constable of such county, commanding him to take into his possession enough of the personal estate of the person against whom such suit is instituted, and keep the same in his custody till such suit is determined, and in case of such seizure, such justice and such constable shall be governed by the regulations concerning proceedings in complaints of replevin.

Treasurer and auditor witnesses.

SEC. 5. Such treasurer and auditor shall be competent witnesses in any such suit, and all damages recovered thereon shall be paid into the county treasury for the benefit of the common schools.

CHAPTER 66.

AN ACT for the incorporation of Manufacturing and Mining Companies, and companies for Mechanical, Chemical, and Building purposes.

[APPROVED MAY 20, 1852.]

Proceedings to incorporate.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That whenever three or more persons may desire to form a company to carry on any kind of manufacturing, mining, mechanical, or chemical business, they shall make, sign, and acknowledge, before some officer capable to take the acknowledgment of deeds, a certificate in writing, which shall state the corporate name adopted by the company, the objects of its formation, the amount of the capital stock, the term of its existence, not, however, to exceed fifty years, the number of directors, and their names, who shall manage the affairs of such company for the first year, and the name of the town and county in which its operations are to be carried on, and file the same in the office of the recorder of such county, which shall be placed upon record, and a duplicate thereof, in the office of the Secretary of State.

Corporate powers.

SEC. 2. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowleded the same, and their successors, shall be a body politic and corporate, and by their corporate name, may take, hold and convey real estate necessary to carry on the operations named in such certificate.

Directors.

SEC. 3. The business of such company shall be managed by not less than three, nor more than eleven directors, who shall be stock-holders therein, and residents of the United States, and a majority of the directors chosen shall be a quorum. Such directors, after one year from the organiza-

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tion of the company, shall be elected by the stockholders annually, and the directors thus chosen, or first appointed, shall elect the president thereof.

Secretary and treasurer—tenure of office.

SEC. 4. There shall also be elected at such annual meeting of the stockholders, a secretary and treasurer, who shall respectively give bond with surety, as shall be required by the by-laws, and be sworn to the faithful discharge of the duties assigned to each of them. Absent stockholders may vote by proxy, but no one stockholder shall give more than twenty votes. All officers shall serve until their successors are chosen and qualified.

Privileges of boat building and gas light companies.

SEC. 5. Corporations building steamboats and other vessels shall have the right to construct marine railways, and all other necessary fixtures and machinery for repairing and launching the same, and gas-light companies may lay pipes through the streets and alleys of any incorporated city or town, by repairing or making good any injury done thereto.

Amount and shares of capital stock.

SEC. 6. The amount of capital stock shall be fixed by the company, but may be increased by a vote of the stockholders at any annual meeting; and such capital stock shall be divided into shares of not more than fifty dollars each.

Stock transferable: not to be used for purchase of other stocks.

SEC. 7. The stock of such company shall be deemed personal estate, and when fully paid in, shall be transferable in such manner as the by-laws may prescribe. Such company shall not use its funds in the purchase of stock in any other corporation.

Stock, when paid in.

SEC. 8. The capital stock, as fixed by such company, shall be paid into the treasury thereof, within eighteen months from the incorporation of the same, in such instalments as the by-laws of the company assess and direct.

Proceedings against shareholder failing to pay.

SEC. 9. If the proprietor of any share shall fail to pay the sum assessed thereon for the period of thirty days after the time appointed for the payment thereof, the treasurer of the company may bring suit for the recovery of the same, or by giving three weeks' notice in a newspaper printed in the county, if any, otherwise by posting such notices in three or more public places, may sell at public auction a sufficient number of shares of such delinquent proprietor to pay all assessments due from him, with all necessary and incidental charges, and a deed of the shares so sold shall transfer the same to the purchaser and entitle him to a certificate therefor.

Certificate of amount of stock.

SEC. 10. The president and directors, within thirty days after the payment of the last instalment of the capital stock, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed by the president, and a majority of the directors; and they shall, within the said thirty days, file the same for record, in the office of the clerk of the circuit court, in the proper county. If said capital stock shall have been increased, as provided in section six, and the last instalment of such additional stock

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is paid in, then such officers, within the time named, shall make a like certificate, and cause it to be recorded as above.

Individual liability.

SEC. 11. The stockholders of such company shall be individually liable, jointly and severally, for all debts due and owing laborers, servants and apprentices, for services rendered; and, to other creditors of the company they shall be liable to an amount equal to the stock held by them respectively.

Company may reduce amount of capital.

SEC. 12. Every such company may, by a vote of its stockholders, at any meeting called for that purpose, reduce the capital stock of the same; and, in such case, a certified copy of the vote shall, within thirty days thereafter, be filed in the office of the clerk of the circuit court in which the original certificate was filed, and the same shall, in like manner, be recorded, and also a duplicate of the same, in the office of the Secretary of State; and in default thereof the directors of such company shall be jointly and severally liable for debts contracted after the said thirty days, and before the record of such vote.

Annual report.

SEC. 13. Every such company shall, annually, within twenty days from the first day of January, make a report, which such company shall cause to be published in some newspaper printed in the county, if any, otherwise in the State, nearest thereto, which shall state the amount of capital, the amount of assessments made, and actually paid in, and the amount of existing debts, which report shall be signed by the president, and a majority of the directors, and shall be verified by the oath of the president, and such directors, and secretary.

Liability for paying dividends when indebtedness equals three-fourths of capital.

SEC. 14. If any such company shall declare and pay any dividend, when within their knowledge, the outstanding debts of such company are equal to three-fourths of the capital stock, as shown by the books thereof, or known from reliable sources of information, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall thereafter be contracted during their continuance in office: *Provided*, that, if any of the directors object to declaring such dividend, and file their objection, in writing, with the secretary of the company, and with the clerk of the county, they shall be exempt from such liability.

Liability for making false report, &c.

SEC. 15. If any certificate or report made, or public notice given, by the officers of any such company, as required by this act, shall be false in any material representation, or if they shall fail to give such notice, or make such report, all the officers who shall sign the same, knowing it to be false, or fail to give the notice, or make reports, as aforesaid, shall be jointly and severally liable for all the debts of the company contracted while they are stockholders, or officers thereof.

Suit against officer liable as above.

SEC. 16. When any of the officers of such corporation shall be liable, by the provisions of this act, to pay the debt of such company, any person to whom they shall be so liable,

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may have an action against such officer; and the declaration, or statement, in such action shall specify the claim against the company, and the ground upon which the plaintiff charges the defendant personally; and such action may be brought although suit be pending against the company for the same claim or demand, and both be prosecuted until the plaintiff shall have recovered his debt with costs and charges.

CHAPTER 67.

AN ACT declaratory of the law regulating Marriages, and enforcing the provisions thereof by proper penalties.

[APPROVED MARCH 5, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That marriage is declared to be a civil contract into which males of the age of seventeen and females of the age of fourteen, not within the prohibited degrees of consanguinity, are capable of entering. Who may marry. 2 Kent, 75, 82.

SEC. 2. The following marriages are declared void: Void marriages.

First. When either party had a wife or husband living at the time of such marriage. Former marriage.

Second. When one of the parties is a white person, and the other possessed of one-eigth or more of negro blood. With a negro.

Third. When either party is insane or idiotic, at the time of such marriage.* Insane.

SEC. 3. Marriages may be solemnized by ministers of the Gospel, and priests of every church throughout the State, judges of courts of record, and justices of the peace, within their respective jurisdiction, and by the society of Friends according to the rules of their society: *Provided*, That no marriage legal in other respects, shall be void on account of the incapacity of the person solemnizing the same. Who may solemnize marriage.

SEC. 4. Before any persons, except members of the society of Friends, shall be joined in marriage, they shall produce a license from the clerk of the circuit court of the county in which the female resides, directed to any person empowered by law to solemnize marriages, and authorizing him to join together the persons therein named, as husband and wife. License.

SEC. 5. Such license shall not be issued by the clerk, without the consent of the parent or guardian, if there be any, if the female be within the age of eighteen, or the male within the age of twenty-one. When there is no parent or Consent of parent, and residence of female.

* If a person marry, having a former husband or wife living, the second marriage is void.—*Janes* vs. *Janes*, 5 Blackf. 141.

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guardian, resident within the State, and the female has resided within the county where license is sought to be obtained for one month preceding such application, license may issue.

Affidavit.

SEC. 6. An affidavit of the facts as required to exist, by the last preceding section, made by some disinterested person, shall be a sufficient justification of the clerk in issuing any license.

Not to be void if the parties believed it legal. 2 Kent, 90, 80.

SEC. 7. No marriage shall be void or voidable, for the want of license, or other formality required by law, if either of the parties thereto believed it to be legal marriage at the time.

Certificate to be filed and recorded.

SEC. 8. Every person who shall solemnize any marriage, by virtue of the provisions of this act, shall, within three months thereafter, file a certificate thereof in the clerk's office of the county in which such marriage was solemnized, which certificate shall by such clerk be recorded together with such license, and such record or a copy thereof shall be presumptive evidence of the facts therein stated.*

Penalty for clerk granting license contrary to law.

SEC. 9. Every clerk of the circuit court who shall issue any license contrary to the provisions of this act, shall forfeit and pay to the State of Indiana, for the use of common schools, any sum that in the discretion of a jury shall seem right, to be recovered in an action of debt, in the name of the State, and it is made the duty of the prosecuting attorneys within their respective circuits, to prosecute all such suits, for which they shall receive a docket fee of twenty dollars to be taxed with costs of suit.

Penalty for solemnizing marriage contrary to law.

SEC. 10. If any person empowered to solemnize marriage, shall join any persons in marriage contrary to the provisions of this act he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

Failing to file certificate.

SEC. 11. If any person having solemnized a marriage, shall fail to file a certificate thereof in the proper clerk's office, as in this act required, he shall, upon conviction thereof, be fined the sum of five dollars for every month he shall continue to fail or neglect to file such certificate, from and after the expiration of the time within which he is required by this act to file the same. †

* In an action for *crim. con.* it was held that the solemnization of the plaintiff's marriage might be proved by a witness who was present.—*Nixon* vs. *Brown*, 4 Blackf. 157.

Cohabitation is sufficient evidence of marriage, in a petition for dower.—*Fleming* vs. *Fleming*, 8 Blackf. 234.

In a suit for slander brought by husband and wife, the defendant pleaded the general issue, and pleas in justification *Held*, that the plaintiff's marriage was admitted by the pleas.—*Ricket et ux.* vs. *Stanley*, 6 Blackf. 169.

† It is not material to the offense of failing to file a marriage certificate, that a license should have issued.—*State* vs. *McWhinney*, 5 Blackf. 364.

Indictment against a justice of the peace for failing to return a marriage certificate; *held*, that an averment as to a license having issued was unnecessary and surplusage.—*State* vs. *Wilder*, 7 Blackf. 582.

Under this section, a whole month after the expiration of the three months within which the certificate is to be filed, must elapse before the prosecution will lie.—*Kent* vs. *The State*, 8 Blackf. 163.

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Persons solemnizing marriage not competent, to be fined, &c.

SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, he shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars, to which may be added imprisonment in the county jail for a term not exceeding three months.

SEC. 13. Article first of chapter thirty-five of the revised code of 1843, and all other laws on the subject of this act are repealed.

CHAPTER 68.

AN ACT providing for and regulating the relation of Master and Apprentice.

[APPROVED MAY 27, 1852.]

Tenure of indentures.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, Children may be bound to serve as apprentices for any term not extending beyond the age of twenty-one, in a male, or eighteen in a female; but the marriage of a female shall annul her indentures.

By whom child may be bound.

SEC. 2. Children may be bound by the father, or if there be no father, or he be incompetent, then by the mother; if there be neither father or mother, then by the guardian. If the child be over fourteen, his or her assent to the indentures, expressed thereon, and attested by his or her signature, shall be necessary to their validity. Any minor over the age of fourteen, having neither father, mother or guardian, may bind him or herself with the consent of the judge of the court having probate jurisdiction of the proper county, to be testified by his endorsement on the indenture.

Cases where overseers of poor may bind children.

SEC. 3. The overseers of the poor in their respective townships may bind children under the age of sixteen, in the following cases:

First. The child of any pauper supported in whole or in part by the county.

Second. Any child whose parents abandon, or neglect, or are unable to support it.

Third. Any child having neither father, mother, or guardian, and having no sufficient means of support and education.

Fourth. Any white child taken from any asylum in any other State and brought into this State to be bound.

Assent of judge of court of com. pleas necessary to indentures.

SEC. 4. The assent of the judge of the court, having probate jurisdiction in the proper county, shall be necessary to the validity of any indenture, made under the first and second specifications of the third section of this act, and shall be endorsed thereon; and he may in his discretion, cause notice

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to be given to the parents, of application of such assent, and withhold the same until they can be heard.

Children taken from asylums in other States.

SEC. 5. Any indentures executed in pursuance of the fourth specification of the third section of this act, which shall contain the covenants on the part of the master, required of persons procuring children from such asylums, in the State where they are situate, shall be valid for the time named in the first section of this act.

Indentures, how executed.

SEC. 6. All indentures shall be signed and acknowledged by the parties thereto, before some officer authorized to take acknowledgments of deeds, and shall be in two parts; one to be kept by the master or mistress; the other to be filed in the office of the clerk of the court having probate jurisdiction, in the proper county for the use of the apprentice.

Shall be recorded.

SEC. 7. Every such indenture shall within ninety days after execution, be recorded by the recorder of the county in which the master or mistress lives, in a book provided for that purpose, for which he shall receive from such master or mistress a fee of fifty cents.

To be evidence.

SEC. 8. Such indenture when so acknowledged, or such record, or a copy thereof, duly certified, may be read in evidence without further proof.

Apprentice to be taught to read and write, &c.

SEC. 9. There shall be essential to the validity of any indenture binding a white apprentice and having more than three years to serve, an agreement on the part of the master or mistress, to cause the apprentice to be taught to read and write, and the rules of arithmetic, to the double rule of three, inclusive, if practicable; and in any suit for breach of such agreement, the measure of damages shall be, what the value of the instruction failed to be given, would have been to the apprentice, if given, to be ascertained by the verdict of a jury.

Valuable agreements on part of master, &c., to be for benefit of apprentice.

SEC. 10. All valuable agreements on the part of the master or mistress contained in any indenture, shall be for the benefit of the apprentice; and if stipulated therein to be for the benefit of any other person, shall stand for the benefit of such apprentice, and may be sued on, and recovered in his name.

Court of com. pleas may annul indentures.

SEC. 11. The court having probate jurisdiction in any county where such master or mistress resides, shall have power on complaint in writing, of any party to such indenture, or of any person on behalf of such apprentice, to annul such indenture, for misconduct on the part of such master or mistress, or such apprentice; such notice being given to the parties as such court may order; and if such indenture shall be annulled, for misconduct on the part of the master or mistress, such court shall render judgment in favor of such apprentice for such sum of money as may seem just; which judgment may be given in evidence in mitiga-

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tion of damages in any other suit on such indenture, but shall not be a bar thereto.

May compel absconding apprentice to return.

SEC. 12. Such court may, on application of a master or mistress, cause an absconding apprentice to return to such master or mistress; or if he shall refuse, may commit him to jail; and shall in all cases occurring under this and the preceding section, make such order for the payment of costs as may be just.

Indenture not assignable, &c.

SEC. 13. The indenture shall not be assignable; and the death or removal from the State, of the master or mistress, shall discharge the aprentice from all further obligations; but in case of removal such discharge shall be optional with the apprentice.

Limitation of action on indenture.

SEC. 14. No action shall be commenced on any indenture after two years from the expiration of the term of service.

Hours for labor.

SEC. 15. The master shall not compel any apprentice to work more than ten hours a day, unless he pays him an additional compensation for the same.

CHAPTER 69.

AN ACT to organize the Militia, providing for the appointment, and prescribing the Duties of certain Officers thereof.

[APPROVED JUNE 14, 1852.]

Brigade district; Governor shall appoint brig. general.

SECTION 1. *Be it enacted by the General Assemby of the State of Indiana*, That each congressional district of the State shall be also a military district for brigade purposes, in which the Governor shall appoint and commission a resident citizen thereof, Brigadier General; and each county in such district shall form and constitute one regimental district.

Brig. general shall appoint his staff, &c.

SEC. 2. Such general shall appoint his staff officers, not exceeding the number allotted to an officer of his rank by the law of the United States, or as the necessities of the service require; and recommend to the Governor suitable persons in each of the counties in his brigade, to be commissioned colonel, lieutenant and major, in each county, and the persons thus recommended, shall be so commissioned.

Colonel shall appoint his staff and company officers.

SEC. 3. Such colonel shall appoint such staff officers as he may deem necessary, and one captain and two lieutenants in each township of his county for every one hundred white male inhabitants thereof liable to bear arms, between the ages of eighteen and forty-five, to be ascertained in such manner as may be provided by the regimental court martial.

Captains shall appoint non-commissioned officers.

SEC. 4. Such captains shall appoint four sergeants and four corporals in each company, who shall continue in office one year.

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Tenure of commissioned officers.

SEC. 5. All such officers, except sergeants and corporals, shall continue in office for the term of six years, unless bodily infirmity, or unsoundness of mind prevent them from discharging active duty, or they be removed for other good cause.

Proceedings to remove brig. general.

SEC. 6. Any such brigadier general may be removed from office after a reasonable notice and trial by a State court martial, composed of a majority of brigadier generals of the State.

To remove colonel.

SEC. 7. Any such colonel may be removed after a reasonable notice and trial by a brigade court martial, composed of a majority of the colonels of the brigade.

To remove major, captain, or lieutenant.

SEC. 8. Any such lieutenant colonel, major, captain, or lieutenant may be removed after reasonable notice and trial by a regimental court martial, composed of a majority of all the commissioned officers of such regiment.

Appeal.

SEC. 9. Any person aggrieved may appeal from a regimental court martial to a brigade, and from a brigade to the State court martial, under such regulations as may be prescribed by such courts.

Oath of office.

SEC. 10. Such brigadier generals, colonels, lieutenant colonels, majors, captains, and lieutenants, on receiving their commissions, shall take an oath to be endorsed upon the back thereof, before an officer authorized to administer oaths, that he will support the constitution of the United States and of the State Indiana, and faithfully discharge the duties of his office according to law.

Companies, how formed.

SEC. 11. On receiving his appointment, and once every year thereafter, every captain shall make out a list of all the persons in his township liable to bear arms, and forward a copy thereof to the colonel of the regiment, who shall thereupon form companies in such townships of not less than one hundred privates each, except the number of persons liable to bear arms in such township be less than one hundred, in which case such company shall be composed of all persons in such township liable to bear arms.

Company drill.

SEC. 12. Such captain, after giving ten days' written notice, posted up in five public places of the township, may assemble his company once every year, at a time, and at a convenient public place in such township, and drill them according to the tactics of the United States army.

Battalion drill.

SEC. 13. Such colonel shall divide his county into two or more districts, in each of which, after thirty days' written notice, posted up in ten public places therein, there may be a battallion drill, at a time and place to be designated in such notice.

Superior absent, next in rank to preside.

SEC. 14. On presiding at courts martial and drills, in the absence of the superior, the duties to be performed shall devolve upon the next highest officer present.*

* See *Lorelling* vs. *Learell*, 2 Blackf. 163; *The State* vs. *McLane, et al.*, 2 Blackf. 192; *The State* vs. *Learell et al.* 3 Blackf. 117; *Mitchell et al.*, vs. *The State*, 3 Blackf. 391.

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Enumeration.

SEC. 15. The colonel of each regiment shall forward to his general of brigade, an enumeration of the militia of his regiment, and such general, that of his brigade, to the Governor, before the first day of January of each year.

Courts martial to prescribe regulations.

SEC. 16. Such courts martial shall prescribe all the regulations not herein provided, necessary to an efficient organization of the militia.

Volunteer corps may be formed.

SEC. 17. Volunteer companies may be formed within the bounds of any regiment, under such rules and regulations as may be prescribed by the colonel thereof, and approved by the brigadier general.

Distribution of arms.

SEC. 18. On application by the board of commissioners of any county, on a certified copy of their order therefor, the Governor shall cause to be sent to such county, at its expense, its quota of the public arms.

Arms may be transferred to volunteer corps

SEC. 19. Such boards of commissioners shall have the care of all public arms within their respective counties, and may transfer them under such regulations as they may prescribe to such volunteer companies, battalions, or regiments, on having the safe keeping and return thereof, when demanded by the authorized agent of the board, secured by bond and approved sureties.

Adjutant, quartermaster, and commissary general.

SEC. 20. The Governor shall appoint an adjutant, quartermaster, and commissary general, and sush quartermaster general shall have the custody of all public arms not distributed among the several counties, and shall preserve the same in good order, in some suitable room belonging to the State, at the seat of government, until they are legally disposed of; for which he shall receive a reasonable compensation, to be allowed by the General Assembly.

CHAPTER 70.

AN ACT to regulate the mileage of Sheriffs in conveying convicts to the State Prison, and of County Treasurers in making deposits, and in their settlements with the Treasurer and Auditor of State, and the mileage of members of the General Assembly.

[APPROVED JUNE 17, 1852.]

Distances for which sheriffs shall have mileage.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the sheriffs of the several counties in this State, for their services in conveying convicts to the State Prison, shall be allowed mileage themselves in going

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and returning therefrom for the following distances from each county respectively:

From Adams county,	245 miles.
From Allen county,	266 "
From Bartholomew county,	66 "
From Benton county,	203 "
From Blackford county,	185 "
From Boone county,	138 "
From Brown county,	95 "
From Carroll county,	175 "
From Cass county,	180 "
From Clark county,	13 "
From Clay county,	126 "
From Clinton county,	102 "
From Crawford county,	37 "
From Daviess county,	90 "
From Dearborn county,	125 "
From Decatur county,	95 "
From DeKalb county,	282 "
From Delaware county,	164 "
From Dubois county,	87 "
From Elkhart county,	260 "
From Fayette county,	132 "
From Floyd county,	4 "
From Fountain county,	185 "
From Franklin county,	120 "
From Fulton county,	203 "
From Gibson county,	110 "
From Grant county,	185 "
From Greene county,	110 "
From Hamilton county,	131 "
From Hancock county,	130 "
From Harrison county,	20 "
From Hendricks county,	130 "
From Henry county,	137 "
From Howard county,	165 "
From Huntington county,	238 "
From Jackson county,	55 "
From Jasper county,	235 "
From Jay county,	210 "
From Jefferson county,	50 "
From Jennings county,	72 "
From Johnson county,	90 "
From Knox county,	106 "
From Kosciusko county,	236 "
From Lagrange county,	310 "
From Lake county,	305 "
From Laporte county,	254 "
From Lawrence county,	70 "
From Madison county,	144 "
From Marion county,	110 "

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From Marshall county,	228	miles.
From Martin county,	78	"
From Miami county,	181	"
From Monroe county,	95	"
From Montgomery county,	162	"
From Morgan county,	116	"
From Noble county,	290	"
From Ohio county,	110	"
From Orange county,	45	"
From Owen county,	110	"
From Parke county,	160	"
From Perry county,	100	"
From Pike county,	93	"
From Porter county,	287	"
From Posey county,	143	"
From Pulaski county,	210	"
From Putnam county,	140	"
From Randolph county,	190	"
From Ripley county,	75	"
From Rush county,	116	"
From Scott county,	29	"
From Shelby county,	98	"
From Spencer county,	110	"
From Sullivan county,	120	"
From Steuben county,	307	"
From Starke county,	235	"
From St. Joseph county,	250	"
From Switzerland county,	75	"
From Tippecanoe county,	173	"
From Tipton county,	150	"
From Union county,	134	"
From Vanderburgh county,	150	"
From Vermillion county,	165	"
From Vigo county,	135	"
From Wabash county,	197	"
From Warren county,	185	"
From Warrick county,	100	"
From Washington county,	38	"
From Wayne county,	153	"
From Wells county,	235	"
From White county,	205	"
From Whitley county,	255	"

Distances for which county treasurers shall have mileage.

SEC. 2. The county treasurers of the several counties in this State, for their services in going to and returning from Indianapolis to make deposits with Treasurer of State, and to make their annual settlements with that officer, shall be

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allowed mileage, for the number of miles, from each county respectively, herein set forth as follows:

From Adams county,	135	miles.
From Allen county,	150	"
From Bartholomew county,	44	"
From Benton county,	93	"
From Blackford county,	75	"
From Boone county,	28	"
From Brown county,	45	"
From Carroll county,	65	"
From Cass county,	70	"
From Clark county,	117	"
From Clay county,	68	"
From Clinton county,	45	"
From Crawford county,	128	"
From Daviess county,	114	"
From Dearborn county,	85	"
From Decatur county,	47	"
From DeKalb county,	172	"
From Delaware county,	54	"
From Dubois county,	140	"
From Elkhart county,	150	"
From Fayette county,	60	"
From Floyd county,	114	"
From Fountain county,	75	"
From Franklin county,	76	"
From Fulton county,	93	"
From Gibson county,	165	"
From Grant county,	75	"
From Greene county,	80	"
From Hamilton county,	21	"
From Hancock county,	20	"
From Harrison county,	128	"
From Hendricks county,	20	"
From Henry county,	47	"
From Howard county,	55	"
From Huntington county,	120	"
From Jackson county,	75	"
From Jasper county,	125	"
From Jay county,	100	"
From Jefferson county,	86	"
From Jennings county,	65	"
From Johnson county,	20	"
From Knox county,	135	"
From Kosciusko county,	126	"
From Lagrange county,	200	"
From Lake county,	195	"
From Laporte county,	144	"
From Lawrence county,	75	"
From Madison county,	34	"

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From Marion county,	—miles.
From Marshall county,	118 "
From Martin county,	100 "
From Miami county,	72 "
From Monroe county,	52 "
From Montgomery county,	45 "
From Morgan county,	31 "
From Noble county,	180 "
From Ohio county,	95 "
From Orange county,	100 "
From Owen county,	54 "
From Parke county,	65 "
From Perry county,	158 "
From Pike county,	150 "
From Porter county,	177 "
From Posey county,	200 "
From Pulaski county,	100 "
From Putnam county,	40 "
From Randolph county,	80 "
From Ripley county,	71 "
From Rush county,	45 "
From Scott county,	101 "
From Shelby county,	26 "
From Spencer county,	182 "
From Starke county,	125 "
From Steuben county,	197 "
From St. Joseph county,	140 "
From Sullivan county,	97 "
From Switzerland county,	103 "
From Tippecanoe county,	67 "
From Tipton county,	40 "
From Union county,	75 "
From Vanderburgh county,	192 "
From Vermillion county,	80 "
From Vigo county,	71 "
From Wabash county,	87 "
From Warren county,	75 "
From Warrick county,	160 "
From Washington county,	97 "
From Wayne county,	63 "
From Wells county,	125 "
From White county,	95 "
From Whitley county,	145 "

Mileage of treasurers in making deposits.

SEC. 3. The several county treasurers shall, from time to time, make deposits, on the order of the Auditor and Treasurer of State, of such sums of State revenue as may be in their hands, to the credit of the Treasurer of State, either in the Treasury of State, or in such bank or branch of the State Bank as the auditor and treasurer shall direct, and for all such service heretofore performed, or hereafter to be per-

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formed, such county treasurer shall be allowed eight cents per mile for each mile necessarily traveled, in going to and returning from such place of deposit: *Provided*, Such allowance shall in no case be made at a rate inconsistent with the scale of distances contained in this act.

Mileage of members of the General Assembly to be for like distances as that of treasurers.

SEC. 4. In computing the mileage of members of the General Assembly, the distances from the respective county seats to Indianapolis shall be held and taken to be the same as, by the second section of this act, are established for the travel of county treasurers.

CHAPTER 71.

AN ACT to regulate the toll of Grist-Mills, and prescribing certain duties of Millers.

[APPROVED, MAY 31, 1852.]

Rate of toll.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, At all water grist-mills there shall not be charged for toll a higher rate than one-eighth part for grinding and bolting wheat and rye, and grinding Indian corn, oats, and barley; and for grinding malt and chopping rye.

Bags to be marked.

SEC. 2. Every bag or cask deposited at any grist-mill shall have marked on it, in distinct and durable characters, the initial letters of his christian, and the whole of his surname, and when so marked, and in that case only, the owner of such bag or cask, if the same be lost or destroyed, except by unavoidable accident, shall recover the value of the grain, bag, or cask, so lost, or destroyed.

Penalty for failing to grind, &c.

SEC. 3. Every miller who shall fail to grind grain brought to his mill, in turn, (except for purposes of distillation,) or to receive and carry into and out of such mill, load and unload, such grain, when demanded by the owner thereof, shall be liable to such owner for damages in a sum not exceeding twenty nor less than two dollars.

Penalty for failing to post up rates of toll.

SEC. 4. If any miller shall fail to keep posted up in a conspicuous place in his mill, the rates of toll he shall charge for grinding grain, or shall demand or receive a greater rate than is so posted up, he shall forfeit to any person who may sue for the same, the sum of one dollar for every day he shall fail to keep such rates so posted up, or in every case in which he shall demand or receive such greater rate.

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CHAPTER 72.

AN ACT touching the qualifications of officers of Municipal Incorporations and also the qualifications of Electors at Municipal Elections and repealing all laws inconsistant with this act.

[APPROVED JUNE 10, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That no property qualification shall be necessary to render any citizen eligible to hold any office of any municipal incorporations in the State. No property qualification.

SEC. 2. That in all municipal elections under town or city charters in this State, no other qualifications shall hereafter be required of any voter than such as is made necessary under the constitution of the State, except that the voter shall reside in the ward or district where he may offer to vote. Qualification of voters.

SEC. 3. All laws or parts of laws contravening the provisions of this act be, and the same are hereby repealed; and as an emergency exists for the immediate taking effect thereof, it is declared to be in force from and after its passage and publication in the Indiana State Sentinel. Laws conflicting with this act repealed, &c.

CHAPTER 73.

AN ACT to authorize the boards doing county business to declare Water Courses navigable.

[APPROVED MAY 31, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the boards doing county business in the several counties in this State be, and are hereby authorized to declare any water course in their respective counties navigable, on the petition of twenty-four freeholders of the county, residing in the vicinity, through which the same may run, and which is intended to be declared navigable.* When board may declare water courses navigable.

SEC. 2. The said board shall cause an examination of the water course intended to be declared navigable, to be made by some suitable person, who shall ascertain and report to said board the length of the same, and how much thereof is capable of being declared navigable, which report, if in the opinion of said board, satisfies them of the said stream being Examination of stream.

*A river in this State may be navigable and a public highway, without its having been declared to be so by the Legislature.—*Martin et al. vs. Bliss*, 5 Blackf. 35.

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of public utility, as a navigable one, the said board shall confirm said report, and cause the same to be recorded on the records of said board, as public highways are recorded.

Supervisor to clear out stream.

SEC. 3. The supervisor of the road district through which said water course may run, shall take charge thereof, as a part of his general duties as supervisor of public highways, and for the purpose of keeping the same in a navigable order, said supervisor shall annually call out for two days the inhabitants of said district, liable to work upon the public highways, who shall work on and clear out timber and other obstructions that may obstruct the navigation thereof.

Penalty for obstructing.

SEC. 4. Any person obstructing any water course declared navigable, shall be liable to the same pains and penalties, of persons guilty of obstructing public highways, and the general laws governing roads and public highways and the laying out and working thereof in all other respects, shall be the law governing the laying out and working of navigable water courses.*

Declaration not to affect mills, dams, etc.

SEC. 5. The declaration of navigable water courses as navigable, by said county board, shall not affect any mill nor any dam, aquaduct, viaduct, bridge, or machinery which has been, or may hereafter be established on said stream.

Board may appropriate money for clearing out.

SEC. 6. The boards of commissioners of the several counties shall have power to appropriate from the county treasury such sums of money as they may deem necessary, not exceeding two hundred dollars, to remove obstructions from such streams, as have been heretofore declared navigable by law, or may be hereafter declared navigable, under the provisions of this act; and to require the supervisor of any district through which such streams may run, to call out the hands in such district as many days, besides the two days mentioned in the third section of this act, as may be necessary to remove obstructions from such streams: *Provided*, That no person shall be required to work more than four days.

SEC. 7. This act to be in force from and after its publication and circulation.

*The acts of 1829 and 1831, making it a penal offence to erect or continue any obstruction in certain navigable streams within the State, are constitutional and valid.—*Cox* vs. *The State*, 3 Blackf. 193.

The public have a right of way in such streams, which cannot be interrupted by the owners of the banks thereof.—*Ibid.*

Neither the State Legislature nor Congress can authorize the erection of obstructions in any navigable stream within the State.—*Ibid.* As to what an indictment for such obstruction should state, see same case. As to the declaration in a civil suit, see *Tyrell et al.* vs. *Lockhart*, 3 Blackf. 136.

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CHAPTER 74.

AN ACT to enforce the 13th Article of the Constitution.

[APPROVED JUNE 18, 1852.]

Not to come into this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall not be lawful for any negro or mulatto to come into, settle in, or become an inhabitant of the State.

Clerk to give notice to negroes and mulattoes.

SEC. 2. The clerks of the several circuit courts in this State shall notice, by publication in the newspaper published in their respective counties having the greatest circulation, and if no newspaper be published therein, then by printed hand-bills posted up in three of the most public places in each township of such county, requiring all negroes and mulattoes who were inhabitants of the State prior to the first day of November, A. D. 1851, and entitled to reside therein, to appear before him for registry.

To register negroes, &c.

SEC. 3. It shall be the duty of each clerk of the said circuit courts to provide a suitable book, to be called the register of negroes and mulattoes, in which he shall record the name, age, description, place of birth and residence of each and every mullatto who may present himself or herself before him for the purpose of being registered, and, also, the names of the witnesses by whom the right of such negro or mulatto to reside in the State of Indiana shall have been proven.

Clerk may subpœna witnesses.

SEC. 4. The clerk of the said circuit court, when any negro or mulatto shall come before him for the purpose of being registered, shall have power to cause to come before him such witnesses as may be necessary to prove the right of inhabitation of such negro or mulatto, by process of subpœna, and shall proceed to hear and determine the right of such negro or mulatto.

Certificate of register.

SEC. 5. When the right of any such negro or mulatto shall have been proven to the satisfaction of such clerk he shall register the said negro or mulatto in his register of negroes and mulattoes, and shall also issue to such negro or mulatto a certificate, under the seal of the said court and attested by such clerk, setting forth the facts contained in such register; which certificate shall be conclusive evidence of the facts therein stated in all prosecutions against the employers of negroes or mulattoes, unless it is shown that said employer had notice that the same was obtained by fraud or other undue means, or was not genuine, and the same shall be *prima facie* evidence only in all other cases, and shall be issued to such negro or mulatto without charge.

Contracts made after 1st Nov., 1851, void.

SEC. 6. All contracts made with negroes or mulattoes who shall have come into the State of Indiana subsequent to the first day of November A. D., 1851, are hereby declared null and void.

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Penalty for encouraging negro to come into State.

SEC. 7. Any person who shall employ a negro or mulatto who shall have come into the State of Indiana subsequent to the thirty-first day of October in the year one thousand eight hundred and fifty-one, or shall hereafter come into the said State, or who shall encourage such negro or mulatto to remain in the State, shall be fined in any sum not less than ten dollars nor than five hundred dollars.

Construction of act.

SEC. 8. This act shall apply only to contracts made with negroes and mullatoes subsequent to the passage of this act.

Penalty.

SEC. 9. Any negro or mulatto who shall come into or settle in this State contrary to, and in violation of the provisions of the constitution, and of the first section of this act, shall be fined in any sum not less that ten, nor more than five hundred dollars.

CHAPTER 75.

AN ACT for the subscription to, and preservation of the Public Newspapers printed in the several counties of this State.

[APPROVED JUNE 9, 1852.]

Preamble.

WHEREAS, The preservation of files of public newspapers, printed in this State, would be of public utility and convenience, as a species of public records for perpetuating in permanent form, advertisements and notices of a legal character as well as a variety of other matters of local and general concernment: therefore,

County board may direct subscription.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the county commissioners of any county in this State may, at their option, authorize and direct the subscription to and preservation of the public newspapers printed in their county.

Recorder to subscribe for, and have papers bound.

SEC. 2. Upon a certified order to that effect, the recorder of such county or person doing the business of recorder shall subscribe for one of each of the newspapers of a political or miscellaneous character published in his county, file the same in his office and cause said newspapers to be substantially bound, from to time, in volumes of a convenient size, to be kept in his office for the use of the inhabitants of this State who shall, at all times during office hours, have access to the same free of all charge and expense.

Subscription, how paid.

SEC. 3. The subscription price and expense of binding and preservation of such newspapers shall be paid out of the county treasury, and the accounts therefor be audited and allowed in the same manner that other accounts are.

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CHAPTER 76.

AN ACT providing for the appointment of Notaries Public and defining their powers and duties.

[APPROVED JUNE 9, 1852.]

Notaries to be appointed by the Governor, to take oath, and give bond.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, Notaries public shall be appointed and commissioned by the Governor, upon a certificate of qualifications and moral character, from the judge of the circuit court of their counties respectively; and shall, before they enter upon their duties as such, take an oath of office before the clerk of the circuit court of their county, and file in his office, to be approved of by him, an official bond, in the penalty of one thousand dollars, and shall serve four years.

Those now in office to serve out their terms.

SEC. 2. Notaries now in office, may serve out the terms for which they were respectively appointed; but hereafter, no greater number shall be appointed, than is in the next section provided.

How many each township is entitled to.

SEC. 3. Each civil township, shall be entitled to at least one notary, and one additional one for each incorporated town therein; if a township contain over one thousand inhabitants, it shall be entitled to two, and to an additional one for every two thousand it may have over four thousand. No person shall be appointed a notary public without furnishing to the Governor a certificate of the clerk of the circuit court of his county, of his place of residence, and of the number of inhabitants, and incorporated towns in the township in which he lives; which certificate the clerk shall make when requested, and receive therefor the usual fee.

To procure seal.

SEC. 4. No notary shall be authorized to act until he shall have procured such a seal as will stamp upon paper a distinct impression, in words or letters sufficiently indicating his official character, to which may be added, such other device as he may choose, and all notarial acts, not attested by such seal, shall be void.*

Their powers.

SEC. 5. Every notary shall have power, throughout their counties respectively, to

Law merchant.

First. Do all such acts which by common law, and the custom of merchants, they are authorized to do.

Acknowledge deeds.

Second. To take and certify all acknowledgments of deeds, or other instruments of writing, required or authorized by law to be acknowledged.

Administer oaths.

Third. To administer oaths generally, and to take and certify affidavits and depositions.

*The official acts of a notary public must be attested by his official seal, not by a scroll.—*Hinckley* vs. *O'Farrell*, 4 Blackf. 185.
See also *Dumont* vs. *McCracken*, 6 Blackf. 355.

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Effect of seal.

SEC. 6. The official certificate of a notary public, attested by his seal, shall be presumptive evidence of the facts therein stated, in cases where by law he is authorized to certify such facts.

No officer, &c., to be appointed.

SEC. 7. No person holding any lucrative office, or being an officer in any bank, or corporation, or association, possessed of any banking powers, shall be a notary public, and his acceptance of any such office shall vacate his appointment of notary.

Emergency.

SEC. 8. It is hereby declared that there is an emergency existing for the immediate taking effect of this act, and that the same, shall be in force, from and after its publication in the Indiana State Sentinel and Indiana State Journal.

CHAPTER 77.

AN ACT concerning Promissory Notes and Bills of Exchange.

[APPROVED MAY 12, 1852.]

What instruments negotiable.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That all promissory notes, bills of exchange, bonds, or other instruments in writing, signed by any person who promises to pay money, or acknowledges money to be due, or for the delivery of a specific article, or to convey property, or to perform any stipulation therein mentioned shall be negotiable by endorsement thereon, so as to vest the property thereof in each endorsee successively.

Assignee may sue in his own name.

SEC. 2. The assignee of any such instrument may, in his own name, recover against the person who made the same.

Defense of maker.

SEC. 3. Whatever defense or set-off the maker of any such instrument had, before notice of assignment, against an assignor, or against the original payee, he shall have also against their assignees.

Remedy against endorser.

SEC. 4. Any such assignee, having used due diligence in the premises, shall have his action against his immediate or any remote endorser, and in suit against a remote endorser, he shall have any defence which he might have had in suit brought by his immediate assignee.

Exceptions as to bills of exchange.

SEC. 5. The provisions of the two preceding sections shall not alter the law relative to bills of exchange, as it now is.

Notes payable to order or in bank.

SEC. 6. Notes payable to order or bearer in a bank in this State, shall be negotiable as inland bills of exchange, and the payees and indorsees thereof may recover as in case of such bills.

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Damages for non-payment.

SEC. 7. Damages payable on protest for non-payment or non-acceptance of a bill of exchange, drawn or negotiated within this State, shall be, if drawn upon any person, at any place out of this State, but within the United States, five per cent., but if upon any person at any place without the United States, ten per cent. on the principal of such bill.

No other charges allowed.

SEC. 8. Beyond such damages, no interest or charges accruing prior to protest shall be allowed; but interest from the date of the protest may be recovered.

Rate of exchange.

SEC. 9. As to any such bill payable within the United States, the rate of exchange shall not be taken into account.

When no damages chargeable.

SEC. 10. No damages beyond cost of protest shall be chargeable against drawer or indorser, if, upon notice of protest, and demand of the principal sum, the same is paid.

Must be a valuable consideration.

SEC. 11. No holder of a bill of exchange shall recover damages thereon, if he have not given for the same, or for some interest therein, a valuable consideration.

When means provided for payment within the State, no damages.

SEC. 12. On any bill drawn or negotiated in this State and payable at any place without the State, but in regard to which it shall appear that it was not to be presented for acceptance or payment at that place, if means were provided for its discharge within the State, no damages or charges for protest shall be allowed.

Promissory notes discounted by a bank.

SEC. 13. The provisions of this act, relating to damages on bills of exchange, shall not apply to promissory notes discounted by a bank, and protested for non-payment.

Three days' grace.

SEC. 14. On all bills of exchange payable within the State, whether sight or time bills, three days' grace shall be allowed.

Valuation laws

SEC. 15. Upon any instrument of writing, made within this State or elsewhere, containing a promise to pay money without relief from valuation laws, judgment shall be rendered, and execution had, accordingly.

Holder may institute suit against one or more parties.

SEC. 16. The holder of any note or bill of exchange, negotiable by the law merchant, or by law of this State, may institute one suit against the whole, or any number of the parties liable to such holder; but such holder shall not, at the same term of court, institute more than one suit on such note or bill.

The assignment of promissory notes, in this state, is not governed by the law of merchants.—*Bullitt* vs. *Scribner*, 1 Blackf. 14.

The statute authorizing the assignment of a note, need not be referred to in the declaration.—*Taylor* vs. *Walpole*, 1 Blackf. 378.

The declaration in debt by an assignee against the maker of a promissory note may commence—A. B. complains of C. D. instead of A. B., assignee of E. F. complains, &c.—*Taylor* vs. *Walpole*, 1 Blackf. 378.

Nil debet or non-assumpsit puts the whole case in issue, and requires the assignee of a promissory note, in an action against the maker, to prove his title to the note and every other material allegation in his declaration.

But if such plea is not sworn to, the assignment is admitted.—*Bates et al.*, vs. *Hunt*, 1 Blackf. 67. *Scribner* vs. *Bullitt*, ib. 112.

In an action by a bona fide assignee of a promissory note against the assignor, it is no defence that the note was originally given by the maker to the defendant for an illegal consideration.

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The assignment of a note is itself a contract, which, prima facie, imports a good consideration.—*Johnston et al.*, vs *Dickson, et al.*, ib. 256.

A promissory note is, by statute, the foundation of an action, like a bond or bill of exchange; and the consideration need not, in such case, be averred in the declaration.—*Findley* vs. *Cooley*, ib. 262.

In a suit by the assignee of an obligation for the payment of money against the obligor, the defendant, under the plea payment with a set-off, proved payments to the obligee before the assignment to an amount exceeding the obligation. *Held*, that the defendant could not have a verdict for the overplus; such payments affecting the assignee no farther than to bar his recovery.—*Johnson* vs. *Collins, et al.*, 1 Blackf. 166.

If a debtor having a good defense against a bond, induce an innocent person to obtain an assignment of it, without disclosing his objection, he forfeits his defense.—*Muchmore* vs. *Bates*, 1 Blackf. 248.

A. executed a bond to B. for one thousand dollars. B. assigned it to C. stating in the assignment that the bond was payable in certain bank paper. *Held*, that the assignee could maintain debt on the bond against the obligor, but that the recovery must be limited to the value of the paper mentioned in the assignment. *Fischli* vs. *Cowan*, 1 Blackf. 350.

Suit by the assignee of the payee of a promissory note against the maker. Pleas the general issue, payment, and former recovery. *Held*, that the defendant might prove by the plaintiff's written acknowledgment that the note was assigned to the plaintiff only as a security for a debt of a less amount than that of the note; and might also prove that he, the defendant, had, with notice of the assignment, paid the note to the assignor. *Held*, also, that upon these facts being proved, the plaintiff might recover the amount of the debt intended to be secured by the assignment of the note, but no more.—*Westbrook* vs. *Robinson, et al.*, 5 Blackf. 105.

The declaration in a suit by the assignee against the maker of a promissory note, after stating the execution of the note, etc., averred that the payees, John Greenfield and son, then and there endorsed the same to the plaintiff *Held*, on general demurrer, that the averment was sufficient. *Cooper, assignee*, vs. *Drouillard*, ib. 152.

The statute secures to the obligor the same equitable defense in an action by the assignee he would have had against the obligee.—*Davis* vs. *Clements*, 2 Blackf. 3.

If the maker be notoriously insolvent, the assignee may sue the assignor without having previously sued the maker.—*Youse* vs. *McCreary*, 2 Blackf. 243.

If the assignee of a note cannot collect the money from the maker, he may recover from the assignor the amount paid for the assignment, together with the interest and costs of the suit against the maker. The amount of the note is *prima facie* evidence of the price received by the assignor; but he is at liberty to prove the real consideration.—*Ibid.*

If a promissory note be given to a company as a corporation, the maker is estopped from denying that at the date of the note the company was not a corporation.—*John et al.* vs. *Farmers' &c. Bank*, 2 Blackf. 367.

A parol promise by the payer to the maker of a note that he would not urge payment until a future time, is not binding.—*Berry* vs. *Bates*, 2 Blackf. 118.

In the sale of personal property not in market overt, the general rule is, that, though the purchase be *bona fide* and for value, the purchaser receives no better title than that of which the seller was possessed. But bills of exchange and promissory notes are exceptions to this rule: when they are originally payable to the bearer; or when, in the first instance, they are payable to order and afterwards by a blank indorsement, become payable to bearer, they pass by delivery: and the purchaser who uses due caution, pays a valuable consideration, and takes them in the common course of business, has a good title against all the world, whether the seller had any title or not. A note payable to order, however, cannot pass without an indorsement either by the payee or by some person in the payee's name, and by his authority.—*Elliott* vs. *Armstrong*, 2 Blackf. 198.

The assignee of a note obtained a judgment and ca. sa. in due time against the maker, who was committed to jail, and discharged under the insolvent law. *Held*, that this was prima facie evidence of due diligence under the statute, to bind the assignor, who before suit on the assignment, knew of the maker's insolvency.—*Bullitt* vs. *Scribner*, 1 Blackf. 14.

An assignee of a promissory note cannot sue a remote assignor, where the note assigned is not governed by the law of merchants.—*McCarty* vs. *Rhea*, 1 Blackf. 55.

In an action on the assignment of a note or bond, by the assignee against the assignor, the consideration of the assignment need not be set out in the declaration, but the time when the suit against the maker was instituted, judgment

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obtained, and execution issued, or the circumstances of excuse for not suing him, must be stated.—*Hannah* vs. *Pegg*, 1 Blackf. 181.

To fix the liability of the assignor of a note or bond under our statute, the general rule, except in cases of notorious insolvency, or of something equivalent, is, that the assignee must bring a suit against the maker or obligor, and proceed in the ordinary course of law, for the collection of the debt; and that, as to the execution, the return of a fi. fa. "no property found," is prima facie sufficient. —*Ibid.*

If the maker of a sealed note was solvent at the term when the assignee might have obtained judgment against him but for a defect in the declaration, and if that defect occasioned a continuance, whereby the plaintiff failed to obtain the money from the maker, the assignor is not liable.—*Odam* vs. *Beard*, 1 Blackf. 191.

The assignee of a promissory note, assigned before it was due, delayed thirty days after it became due before he sued the maker. *Held*, that the indorser was not liable, in such case, for the maker's default, unless the indorsee could show that an earlier proceeding was impracticable, or would have been unavailing. —*Merriman* vs. *Maple*, 2 Blackf. 350.

The indorser of a note, under our statute, warrants two things: 1st, that the note is valid, and the maker liable to pay it; 2dly, that the maker of the note is solvent, and able to pay it.—*Howell* vs. *Wilson*, 2 Blackf. 418.

If the indorsee sue the maker, and fail on the ground that the note had been obtained without consideration, the indorser is not bound by this judgment against the validity of the note, if notice was not given him of the pendency of the suit. But the indorser may show, in bar of an execution against him by the indorsee under those circumstances, that the consideration of a note was a good one —*Ibid.*

The indorsee of a note, obtained from the maker without consideration, has a right, as soon as he discovers the imposition, to sue the indorser for having assigned him a note which the maker is not liable to pay.—*Ibid.*

Assumpsit by the assignee of a promissory note, payable on the *30th of October*, 1829, against the maker. Plea, that the payee and another, on the day the note was given, executed to the maker their obligation for the delivery of a certain quantity of bricks, on the *1st of May*, 1829; that the note was given in consideration of the delivery of the bricks; that the bricks had not been delivered, and the consideration of the note had therefore failed. *Held*, on demurrer, that the plea was a good bar to the action.—*Bowles* vs. *Newby*, 2 Blackf. 364.

If a defendant, in an action on a note, rely on a plea of failure of consideration or of fraud, the *onus probandi* lies upon him.—*Towsey* vs *Shook*, 3 Blackf. 267.

If the alleged fraud in such case be in the sale of a patent-right for which the note was given, the fraud must be proved as in other cases.—*Ibid.*

A note for the payment of a certain sum annually, until certain deeds should be executed, is, under our statute, like a promissory note under the statute of *Anne*, a debt *per se*, and may be declared on without the averment of any consideration.—*Arnold* vs. *Brown*, 3 Blackf. 27. *Semble*, that a promissory note payable to a firm, may be filed under the statute, instead of a formal declaration, if the writ contain the names of the partners.—*Hays et al.* vs. *Lanier et al.*, 3 Blackf. 522.

To an action on a promissory note, the defendant pleaded in bar as to part of the amount, that the consideration of that part was goods sold and delivered at a sound price, as good and saleable goods, which goods were damaged, and of little or no value. *Held*, that the plea—containing no averment either of fraud or warranty—was insufficient.—*Phillips et al.* vs. *Bradbury et al.*, 3 Blackf. 388.

If the defendant's plea, to an action on a promissory note, be a failure of consideration, and the plea be not proved, the plaintiff will recover.—*Alloway* vs. *Sibert*, 3 Blackf. 491.

In an action on a promissory note brought by an assignee, the declaration should state the assignment to be made on the note under the hand of the assignor —*Archer* vs. *Spencer*, 3 Blackf. 405.

If a promissory note be assigned to a third person, the payee cannot sue on it without showing, that, notwithstanding the assignment, it is his property.— *Ibid.*

If a note be payable to A., B. cannot sue on it in his own name unless it be assigned to him.—*McClelland* vs. *Quarels*, 3 Blackf. 4..9.

See *Johnson et al.*, vs. *Baird*, 3 Blackf. 153, 182; *Stutsman* vs. *Stutsman*, 3 Blackf. 231; *Wernas* vs. *Mothershead et al.*, 3 Blackf. 401; *Morrow* vs. *Seaman*, 3 Blackf. 338; *Hager et al.* vs. *Mounts*, 3 Blackf. 57; *Taylor et al.* vs. *Hillyer*, 3 Blackf. 433; *Hager et al.* vs. *Mounts*, 3 Blackf. 57, 261; *McClelland* vs. *Quarels*, 3 Blackf. 459.

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If a note upon which the maker has confessed judgment, was obtained by fraud or mistake, he may obtain relief in a court of chancery.—*Cummins* vs. *White et al.*, 4 Blackf. 356.

See *Hughes* vs. *Walker et al.*, 4 Blackf. 50; *Cunningham* vs. *Gwinn*, 4 Blackf. 341; *Runnion* vs. *Crane et al.*, 4 Blackf. 466; *State Bank of Indiana* vs. *Brooks*, 4 Blackf. 485.

A note payable to a woman who is one of two plaintiffs in a suit, is not a sufficient statement of the cause of action, without an averment of her marriage with her co-plaintiff.—*Vandegriff* vs. *Tate et ux.*, 4 Blackf. 174.

In a suit commenced before a justice of the peace, by the assignee against the assignor of a promissory note, the plaintiff need only file, as a cause of action, the note with the assignment.—*Watson* vs. *New*, 4 Blackf. 313.

A promissory note is not evidence on a count for money had and received, against one of the makers, who is only a surety for the other.—*Hatten* vs. *Robinson*, 4 Blackf. 479.

See *Early* vs. *Patterson*, 4 Blackf. 449; *Fletcher* vs. *Dana, et al.*, 4 Blackf. 377.

Held, that a promissory note dated at *Union* county, *State of Indiana*, might be declared on in another county without noticing the words *State of Indiana*. —*Reagan et al.*, vs. *Maze* 4 Blackf. 344.

Held, also, that the declaration in such case need not state the place at which the note is dated —*Ibid.*

See *Marvin* vs. *Slaughter*, 4 Blackf. 529; *Catlett* vs. *McDowell*, 4 Blackf. 556.

A promissory note for the payment of money executed by the plaintiff to a third person, and assigned to the defendant before the commencement of the suit, is a legal matter of set-off.—*Hurd* vs. *Earl*, 4 Blackf. 184.

See *Taylor* vs. *Meek*, 4 Blackf. 388.

The maker of a promissory note is a competent witness for the plaintiff, in an action by the assignee against the assignor, involving the validity of the consideration of the note.—*Fosdick* vs. *Starbuck*, 4 Blackf. 417.

If the payee of a note assign it, and the assignee sue the maker—the plaintiff having released the payee—may examine him as a witness to prove the execution of the note.—*Matheny* vs. *Westfall*, 4 Blackf. 491.

Suit by the assignee against the assignor of a promissory note. The plaintiff had obtained judgment against the maker, and sued out a *fieri facias* which was returned *nulla bond*. *Held*, that as the plaintiff had held the note 14 months after it became due, before he brought the suit, and gave no satisfactory reason for the delay, he had been guilty of gross negligence, and ought not to recover against the assignor.—*Treadway* vs. *Drybread*, 4 Blackf. 20.

To debt on a promissory note, the defendant may plead in general term, that the note was made without any good or valuable consideration whatever.—*Kernodle* vs. *Hunt*, 4 Blackf. 57.

A plea in such case that the note was made in consideration of the sale and conveyance to the defendant of the right to use, sell, &c., a certain patent right, which patent right was of no value—is insufficient.—*Ibid.*

So, if the plea be that the note was executed in consideration of the sale and conveyance to the defendant of a right to use, sell, &c., a certain patent right, which the payee represented to be useful and valuable, but which was in fact of no use or value—it is not sufficient.—*Ibid.*

But a plea in such case, that the note was made in consideration of the sale and conveyance to the defendant of a right to use, sell, &c., a certain patent right, which the payee represented he owned, and had authority to sell, when in fact he had no such ownership or authority—is a good defense to the suit.—*Ibid.*

A promissory note, executed by Ryland T. Brown and Alexander Gregg, and payable to Joseph S. Burr, was indorsed by the payee as follows: "Mr. Gregg—pay the within to Jesse Robinson. (signed) Joseph S. Burr." *Held*, that this indorsement did not transfer the legal ownership of the note to Robinson, and authorize him to maintain a suit on it against the makers or either of them, in his own name.—*Robinson* vs. *Brown*, 4 Blackf. 128.

The payee of a promissory note may sue on the original consideration for which the note was given.—*Hilligoss* vs. *Bond*, 4 Blackf. 186.

If the payee of a promissory note refuse to comploy with the condition upon which the note was made payable to him, he cannot sustain a suit against the maker on the note.—*Coppock* vs. *Burkhart*, 4 Blackf. 220.

A. and B. entered into a written agreement, by which A. was to purchase 1,500 hogs, and deliver them to B. at a particular time and place, and at a specific price. The money necessary to buy the hogs was to be advanced by B. at the date of the contract, and in part performance of it, B. advanced to A. 300 dollars; and A. gave B. a promissory note for the amount, as an evidence merely of the receipt of the money. In consequence of the fault of B. in not afterwards advancing

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according to his agreement, the residue of the money necessary for the purchase, A. was prevented from complying with his part of the contract. *Held*, that a suit would not lie on the note for a want of consideration. *Held also*, that B. could not, under these circumstances recover the money advanced to A. in an action for money had and received, nor sustain an action against him on the special contract.—*McKee* vs. *Miller et al.*, 4 Blackf. 222.

A. owed B. 100 dollars, and gave his note with two sureties for the amount. Afterwards, in consideration of the forbearance of that debt, and of the release of the sureties, A. gave his note to B. for the original debt and fifty dollars more, payable at a future time. *Held*, that the consideration for the whole of the latter note was valid.—*Ibid.*

A note for a certain sum was payable on the 27th of June, 1833. The payee promised in writing, at the bottom of the note, to receive a certain number of steers in payment, provided they should be delivered by the first of April, 1833. *Held*, that if the maker failed to deliver the steers by the said first of April, and to pay the note when due, the payees remedy was an action of debt or assumpsit on the note for the non-payment of the money.—*Ibid.*

The assignee of a promissory note, given without consideration, may sue the assignor at any time, and without having previously sued the maker.—*Fosdick* vs. *Starbuck*, 4 Blackf. 417.

The legal interest in a promissory note though payable to bearer, is not transferrable by delivery under the statute, unless the note be payable at some chartered bank within the State.—*McNitt* vs. *Hatch*, 4 Blackf. 531.

A suit on a promissory note must be brought in the name of the person who has the legal interest in the note.—*Ibid.*

The defendant may, under the general issue, defeat an action of assumpsit on a promissory note, by showing the want or failure of consideration, or he may reduce damages by showing a partial failure of the consideration.—*Collett* vs. *McDowell*, 4 Blackf. 556.

See *Bartholomew* vs. *Hendrix et al.*, 5 Blackf. 572: *Woods et al.* vs. *Harris*, 5 Blackf. 585; *Madenhall et al.* vs. *Senwell*, 5 Blackf. 125; *Cox et al.* vs. *Wallace*, 5 Blackf. 199.

A blank indorsement of a note is sufficient to entitle a bona fide holder to sustain a suit on the note in his own name against the maker.—*Bowers* vs. *Trevor*, 5 Blackf. 24.

See *Evans* vs. *Darlington*, 5 Blackf. 320; *Blont* vs. *Proctor*, 2 Blackf. 265; *Atkinson* vs. *State Bank*, 5 Blackf. 84.

The contents of a note were proved by parol evidence, without accounting for the absence of the note—the evidence not being objected to. *Held*, that the admission of the evidence in such case was not erroneous.—*Hommell* vs. *Gamewell*, 5 Blackf. 5.

In a suit by the assignee of the payee against the maker of a promissory note, the defendant cannot give evidence of declarations made by the payee after his assignment, prejudicial to the interests of the plaintiff.—*Fleming et al.* vs. *Newman*, 5 Blackf. 220.

A suit on a promissory note cannot be defeated by showing a cotemporaneous verbal agreement, varying the terms of the note.—*Bure* vs. *Dishman*, 5 Blackf. 272. See *Lowe* vs. *Bowman*, 5 Blackf. 410; *Fellows et al.* vs. *Kress.*

A judgment in a suit against two persons on a joint promissory note, rendered against one of them, (the other not having been found,) is a bar to a subsequent suit against both on the same note.—*Taylor* vs. *Claypool*, 5 Blackf. 557.

See *Adamson et al.* vs. *Wood et al.*, 5 Blackf. 448.

The holder of a note for payment of money, is not obliged to receive payment on it from the maker, of part of the amount due.—*Jennings* vs. *Shriver*, 5 Blackf. 37.

Debt on a note. Plea, no consideration. Replication, setting out a consideration. Rejoinder, showing a partial failure of consideration. *Held*, that the rejoinder was a departure.—*Kilgore* vs. *Powers*, 5 Blackf. 22.

See *Stout et al.* vs. *Hicks*, 5 Blackf. 49; *Cooper* vs. *Drouillard*, 5 Blackf. 152.

If to a suit on a promissory note, the defendant plead the want or failure of consideration, the plaintiff may reply generally that the consideration had not failed, in manner and form as alleged in the plea.—*Farmer* vs. *Fairman*, 5 Blackf. 257.

In a suit against the maker of a promissory note, the declaration averred that the note was payable to *E. R. Day*, and that *E. R. Day* assigned it to the plaintiff. *Held*, that the omission of *Day's* Christian name did not render the averment objectionable.—*Budd* vs. *Wilkinson*, 5 Blackf. 264. See *Leaphardt* vs. *Sloan*, 5 Blackf. 278.

See *Thomas* vs. *Quick*, 5 Blackf. 334; *Garrett* vs. *Heaston*, 5 Blackf. 349; *Newkirk et al.* vs. *Johnson et al; Bequette* vs. *Lasselle*, 5 Blackf. 443; *Reid* vs.

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Cox, 5 Blackf. 312; *Ramsay et al.* vs. *Herndon*, 5 Blackf. 345; *Taylor* vs. *Perry*, 5 Blackf. 599; *Tate* vs. *the State*, 5 Blackf. 174.

W. Johnson, one of the partners of the firm of *Caldwell, Saxon & Johnson*, executed the following note: "December 7, 1835. One day after date, due *J. Sithens* 267 dollars and 87 cents for work done on west river bridge. For the company of *W. Caldwell, W. Saxon* and *W. Johnson*." *Held*, that this note bound the firm.—*Caldwell* vs. *Sithens*, 5 Blackf. 99.

Suit by the assignee of the payee of a promissory note against the maker. Pleas, the general issue, payment, and former recovery. *Held*, that the defendant might prove by the plaintiff's written acknowledgment, that the note was assigned to the plaintiff only as a security for a debt of a less amount than that of the note; and might also prove that he, the defendant had, with notice of the assignment paid the note to the assignor. *Held*, also, that upon those facts being proved, the plaintiff might recover the amount of the debt intended to be secured by the assignment of the note, but no more.—*Westbrook* vs. *Robinson et al.*, 5 Blackf. 105.

In a suit by *Alexis Coquillard* on a promissory note averred in the declaration to be payable to the plaintiff, a note payable on its face to *A. Coquillard* is admissible evidence.—*Taylor* vs. *Coquillard*, 5 Blackf. 158.

And the possession by the plaintiff, *Alexis Coquillard*, of a note payable on its face to *A. Coquillard*, is *prima facie* evidence that the plaintiff is the payee of the note.—*Ibid.*

The payee's possession of a note is *prima facie* evidence that it is his, though there be on the note his special indorsement of it to a third person.—*Williams et al.* vs. *Dyer et al.*, 5 Blackf. 160.

A promissory note was declared on as made by the defendant, *Stanislaus Lasselle*. Plea, the general issue, without oath. The note produced being signed *S. Lasselle*, was objected to as evidence, on the ground of variance. *Held*, that the note, with evidence that the defendant usually signed his name *S. Lasselle*, was admissible.—*Lasselle* vs. *Hewson*, 5 Blackf. 161.

Suit by *Paul Spofford, Thomas Tiletson*, and *Moses Kimball*, on a promissory note. The declaration alleged the note to be payable to the plaintiffs by the name and description of *Spofford, Tiletson & Co.* *Held*, that a note payable on its face to *Spofford, Tiletson & Co.*, was not of itself sufficient evidence to support the action.—*Fraser et. al.* vs. *Spofford et al.*, 5 Blackf. 207.

Debt against A. and B. on a promissory note, alleged in the declaration to have been made by the defendants. A. made default, and B. pleaded *nil debet* under oath. *Held*, that on the trial of the issue with B. the plaintiff might prove the partnership of the defendants, at the date of the note, and A.'s subsequent admissions respecting the execution of the note.—*Ensminger et al.* vs. *Marvin*, 5 Blackf 210.

A promissory note executed by one partner in the name of the firm, is *prima facie* evidence that it was given for partnership purposes.—*Ibid.*

When a promissory note is made and assigned in one country, and sued upon in another, the assignee's title depends on the *lex loci contractus*.—*Yeatman* vs. *Cullen et al.*, 5 Blackf. 240.

The laws of the State where a promissory note is made and assigned, must govern as to the validity of the defense to a suit brought on the note in another State, by the assignee against the maker.—*Ibid.*

Pleas to such suit (the note having been assigned before it was due,) that the note was made without consideration, and that it was obtained by fraud, are not valid by the statute of Ohio, which is the same on the subject with the law-merchant.—*Ibid.*

Debt by the assignee against the maker of a promissory note. Pleas, *nil debet*, and failure of consideration. *Held*, that the plaintiff could not recover, without producing at the trial, an assignment to him of the note.—*Arnold* vs. *Sturges*, 5 Blackf. 256.

An indorsement on a note by the payees to themselves is a nullity.—*Ramsey et al.* vs. *Herndon*, 5 Blackf 345.

Smith, the payee of a promissory note, indorsed it thus: "Pay the bearer.—*S. Smith*." and delivered it to A. *Held*, that A. might erase the words "Pay the bearer," and insert in their place over *Smith's* signature, a formal assignment to himself.—*Foote et al.* vs. *Bragg*, 5 Blackf. 363.

The administrator of the indorser of a promissory note payable at the branch of the State Bank at Vincennes, lived about three miles from that town, the post office in which being the nearest one to his residence, and the office at which his neighbors usually received their letters. *Held*, that a notice in the usual form to the administrator of the non-payment of the note, put into that office in proper time, was sufficient.—*Timins* vs. *Deliste*, 5 Blackf. 447.

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Debt by the assignee of a promissory note against the maker. Plea, *nil debet*. *Held*, that the plaintiff was not obliged to prove the assignment, there being no affidavit denying it.—*Berger* vs. *Henderson*, 5 Blackf. 545.

Assumpsit by the payee of a promissory note against the maker. Plea, that the note had been assigned, &c. *Held*, that the assignment not being denied under oath was evidence for the defendant without proof of its execution.—*Faught* vs. *Crosby*, 5 Blackf. 554.

A note beginning, "I promise," &c., and signed by two persons, is joint and several, and a suit can therefore be sustained on it either against both the makers, or against one of them only, at the election of the payee.—*Groves et al.* vs. *Stephenson*, 5 Blackf. 584.

In a suit on a promissory note by an assignee against the maker, the declaration alleged that the promise was to pay to the order of certain persons trading under the name of *W.* and *R. P. Resor*, (but by mistake written on the face of the note, *W. R.* and *P. Resor*, meaning, however, the said *W.* and *R. P. Resor*,) that *W.* and *R. P. Resor*, indorsed the note, &c. *Held*, that the note, though it purported to be payable to *W. R.* and *P. Resor*, was not objectionable as evidence on the ground of variance.—*Patterson* vs. *Graves*, 5 Blackf. 593.

See *Wells* vs. *Jackson*. 6 Blackf. 40.

A note for the payment of money cannot, without the defendant's assent, be taken and sold on execution. Whether such sale would be valid if authorized or assented to by the defendant, *quære*. *Johnson* vs. *Crawford*, 6 Blackf. 377.

A plaintiff suing on a sealed or promissory note as indorsee, may, after a plea of non-assignment, or even at the trial, fill up a blank indorsement: indeed, it is immaterial whether the indorsement be filled up at all or not.—*Clark* vs. *Walker*, 6 Blackf. 82.

The assignee of a promissory note negotiable and payable at a branch of the State Bank, may, by virtue of the statute, join the maker and indorsers of the note in one suit; but he cannot so join the maker and part of the indorsers, unless those not joined are dead.—*Dillon et al.* vs. *The State Bank*, 6 Blackf. 5.

Debt by an assignee against the maker of a promissory note negotiable and payable at a bank in *Cincinnati*. The note was indorsed before it became due; and a statute of *Ohio*, similar to the law-merchant, governed the case. Plea, that when the note was executed, the defendant was not indebted to the payee; that it was given as an accommodation note to be discounted at bank; that if the note should be discounted, and the money paid to the payee or the defendant, it was to remain in force, otherwise to be void; that the note was not discounted; and that the indorsement was made with notice to the plaintiff of the above-named facts, and without consideration. *Held*, that the plea was good.—*Munson* vs. *Cheesborough et al.*, 6 Blackf. 17.

If the payee and owner of a promissory note and payable at a chartered bank within the State, indorse it to a third person, and be afterwards sued by the latter on the indorsement, he may defeat the suit by showing that the indorsement was made without consideration; and a plea to that effect, stating also that the note was not designed to be negotiated in bank, &c., is not objectionable for duplicity.—*Niles* vs. *Porter*, 6 Blackf. 44.

But if the indorsement of such note—the indorser not being the owner—be made for the maker's accommodation, and the indorser be sued by a *bona fide* holder for value who received the note before it was due, the want of consideration for the indorsement is no defence to the suit though the plaintiff knew, when he received the note, for what purpose the indorsement was made; and the circumstance that the note was not put in circulation, &c., makes no difference.—*Ibid.*

In a suit by an assignee against the maker of a promissory note not governed by the law-merchant, the defendant may prove, under the general issue, a breach of warranty as to the quality of goods sold to him by the payee, for the price of which the note was given, in order to lessen the amount to be recovered.—*Comparet et al.* vs. *Johnson et al.*, 6 Blackf. 59.

A promissory note was filed in debt as the cause of action, and the general issue pleaded without oath. *Held*, that the execution of the note was admitted.—*Parry et al.* vs. *Henderson*, 6 Blackf. 72.

Credits entered on a note upon which suit is brought are proper matters for the consideration of the jury in estimating the amount due.—*Henderson* vs. *Reeves*, 6 Blackf. 101.

An assignee of a promissory note obtained judgment in time against the maker, and, after a delay of more than six months, took out a *fieri facias* on the judgment. The execution was returned *nulla bona*. *Held*, that the delay in issuing the execution, unexplained by the assignee, discharged the assignor from his liability on the assignment.—*Bishop et al.* vs. *Yeazle*, 6 Blackf. 127.

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In a suit on a promissory note against several defendants, the plaintiff need only prove its execution by those who plead the general issue under oath: its execution by the others is admitted.—*Taylor et al.* vs. *Gray*, 6 Blackf. 150.

Such note is established by the plaintiff's producing it or accounting for its absence, and by his proving the defendant's signature by a subscribing witness, if there be one, and if not, by proving the defendant's handwriting; an actual delivery of the note need not be proved.—*Ibid.*

Although a promissory note be obtained from the maker by fraud, &c., yet if he induce an innocent person to take an assignment of it without disclosing the objection, he will be liable to the assignee on the note, notwithstanding the fraud, &c.—*Sloan* vs. *The Richmond T. and M. Company*, 6 Blackf. 175.

Two persons made a bet of goods of the value of 100 dollars on the result of a presidential election, and each executed his promissory note to a merchant for that sum, the payee, without notice of the facts, agreeing to furnish the goods to the winner. The loser was to pay his note, and the winner's was to be void. After the election, a suit on the note given by the loser was brought by an assignee. *Held*, that though the goods had been delivered to the winner by the payee of the note, the suit could not be sustained, the consideration of the note being illegal.—*Duncan* vs. *Cox*, 6 Blackf. 270.

A promissory note payable at the branch at *Lafayette*, of the State Bank, was indorsed to the State Bank. The indorser, when the note and indorsement were executed, resided in said town, but was absent in another State when the note fell due. *Held*, that notice of the dishonor of the note, put into the post office at *Lafayette* by a notary, and directed to the indorser in that town, was insufficient. —*Curtis* vs. *The State Bank*, 6 Blackf. 312.

If, when such note falls due, the parties reside in the same town, and there be no penny post there, notice of the dishonor of the note should be personally given to the indorser, or left at his dwelling house or place of business.—*Ibid.*

If the indorser in such case be temporarily absent, the notice should be sent to the house in which he last lived or did business.—*Ibid.*

The payee of a lost promissory note, not having indorsed it, may maintain an action at law on it against the maker.—*Depew* vs. *Wheelan et al.*, 6 Blackf. 485.

In a suit under the statute of 1839 against A., the maker, and B., the indorser, of a promissory note payable at bank on a certain day, a count to be valid, must show a good cause of action against each of the defendants.—*Goodlet* vs. *Britton*, 6 Blackf. 500.

A suit under said statute must be brought against all the makers and indorsers living; and the plaintiff must recover, if at all, against all the defendants served with process, unless where there is a plea by one or more of them showing a personal discharge.—*Ibid.*

The second indorser of an accommodation note is not liable for contribution to the first indorser who has paid the note.—*Wilson* vs. *Stanton*, 6 Blackf. 507.

The legal effect of a blank indorsement of a promissory note, transferred in a regular course of business, cannot be controlled by parol evidence that the indorsement was without recourse.—*Wilson* vs. *Black*, 6 Blackf. 509.

Assumpsit by the assignee against the assignor of a promissory note, assigned after it became due. *Held*, that a delay of seven days after the assignment, in commencing suit against the maker, was not of itself sufficient evidence of the want of due diligence.—*Kelsey* vs. *Ross et al.*, 6 Blackf. 536.

In a suit against several persons as makers, and others as indorsers, of a promissory note negotiable and payable at a bank within the State, a judgment by default cannot be rendered against some of the defendants only, unless there be a return of "not found" as to the others.—*Lodge et al.* vs. *The State Bank*, 6 Blackf. 557.

Although the payee's name in a promissory note have been partially erased so as to be illegible, still a suit on the note may be sustained against the maker by proof that it was executed by him, that it was made payable and was delivered to the plaintiff, that the latter had possession of the note when he commenced the suit, and that his name in it had been erased under circumstances showing the validity of the note not to be affected by the erasure.—*Justus* vs. *Cooper*, 7 Blackf. 7.

On the trial of a suit on such note proved to have been executed by the defendant, the plaintiff offered to prove that the note was originally made payable to him, and that he was in possession of it when he commenced the suit. *Held*, that those facts might be proved as links in the chain of the plaintiff's evidence. —*Ibid.*

An indorsement in blank by a third person of a promissory note, negotiable, &c., made at the date of the note, does not of itself, render the indorser liable, as a maker, to the payee.—*Early* vs. *Foster et al.*, 7 Blackf. 35.

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But as the indorsement may be made under such circumstances as to render him so liable, a note thus indorsed is admissible evidence in a suit by the payee against such indorser and the maker, as joint makers, as a link in the chain of the plaintiff's evidence.—*Ibid.*

Duffield brought an action of debt against *McHenry, Tilford,* and *Ratts.* The first count was on an instrument of writing by which, as alleged, the defendants acknowledged themselves to be indebted to the plaintiff in a certain sum of money, on settlement, in full for joiner's work of the New Washington Seminary. The second count was founded on an instrument of writing in the following words: "April 6th, 1842. Due *John H. Duffield,* on settlement, the sum of 239 dollars in full for the joiner's work of the New Washington Seminary. (Signed) *James McHenry, R. Tilford, F. Ratts,* building committe in behalf of the trustees of the New Washington Seminary." *Held,* that such an instrument of writing as that set out in the second count, did not sustain the first count; and that the second count allowed no cause of action against the defendants. *Held,* also, that if the defendants were authorized to execute the instrument for the trustees, the suit should have been against the trustees; and if the defendants were not so authorized, they were liable in an action on the case for acting in the matter without authority.—*McHenry et al.* vs. *Duffield,* 7 Blackf. 41.

If a person sue as a payee on a promissory note so mutilated that the payee's name is illegible, he must prove that the note was made to him, that he had possession of it when he commenced the suit, and that it was mutilated under circumstances not affecting its validity.—*Hatch* vs. *Dickinson,* 7 Blackf. 48.

The assignee of a promissory note, not negotiable by the law-merchant, may maintain a suit in equity against a remote assignor.—*Dorsey* vs. *Hadlock et al.,* 7 Blackf. 113.

But a suit at law does not lie in such case.—*Ibid.*

A *fi. fa.* issued on the 18th of May on a judgment which was recovered without delay, on the 25th of the preceding month, by an assignee against the maker of a note. All the defendant's property that could be found was levied on and sold, but the proceeds of the sale paid only a part of the debt. *Held,* that the diligence used was sufficient to charge a remote indorser in equity for the balance due on the note.—*Ibid.*

A promissory note was payable to two persons not partners, and indorsed by them. *Held,* that notice by the holder of the maker's non-payment should be given to each of the indorsers.—*The State Bank* vs. *Slaughter,* 7 Blackf. 133.

If two persons make a promissory note, and one of them afterwards obtain possession of the note as his own property from the payee, the note is discharged. —*Cox et al.* vs. *Hodge,* 7 Blackf. 146.

Debt by an assignee against the maker of a promissory note alleged to be lost. Pleas, *nil debet,* and failure of consideration. *Held,* that the oath of the plaintiff was admissible to prove to the court the loss of the note. Held, also, that to enable the plaintiff to recover, he must prove by disinterested witnesses, not only the contents of the note, but that there was on it an indorsement to himself.—*Bean* vs. *Keen,* 7 Blackf. 152.

If it be the understanding of the assignor and assignee of a promissory note at the time of the assignment, that the assignee need not demand payment of the maker before a certain time, no laches can be imputed to the assignee for not commencing suit on the note before that time.—*Nance* vs. *Dunlavy,* 7 Blackf. 172.

The assignee of such note obtained judgment on it against the maker on the 15th of March. *Held,* that the assignee could not, during that month, be charged by the assignor with laches for not having taken out execution.—*Ibid.*

Debt on a promissory note. Plea, the general issue. The defendant proved that the note had been given in consideration of the payee's assignment to him of his right to certain fees, but he did not show they had not been collected. *Held,* that the proof was not sufficient to defeat the suit.—*Biggs* vs. *Evans,* 7 Blackf. 277.

The assignor of a promissory note cannot complain that the assignee's suit against the maker was not commenced in time, if judgment was obtained on the note at the first term of the court after the assignment.—*Spears* vs. *Clark,* 7 Blackf. 283.

A *fi. fa.* on such judgment should be issued within a reasonable time after the close of the term at which the judgment was rendered.—*Ibid.*

Where the judgment in such case was rendered on the 21st of August, and the execution issued on the 21st of September following, it was held (the time when the court adjourned not being shown,) that the execution did not appear to have issued in time to bind the assignor.—*Ibid.*

A promissory note given to the county commissioners, in consideration of

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their appointment of a certain person to the office of collector of the revenue is void.—*The Board of Commissioners, &c.* vs. *Mulliken et al.*, 7 Blackf. 301.

If a promissory note sued on be torn, and a part of it lost, a copy of the entire note, sworn to, is admissible evidence.—*Dean* vs. *Speakman*, 7 Blackf. 317.

An action at law lies on an unnegotiable promissory note, which has been lost or destroyed.—*Ibid.*

Assumpsit by the assignee against the assignor of a promissory note. A judgment had been obtained against the maker, and a *fi. fa.* issued in due time. The *fi. fa.* was returned levied on certain property which remained unsold for want of buyers. About five months after said return, an *alias fi. fa.* issued and was returned, no property found. *Held*, that the second execution and the proceedings on it was void; that on the return of the first execution, a *venditioni exponas* should have issued; and that, under the circumstances, the plaintiff could not recover.—*Macy* vs. *Hollingsworth*, 7 Blackf. 349.

A verbal contract made at the time a promissory note is executed, varying the terms of the note, cannot be set up to defeat a suit on the note.—*Ibid.*

A printed form of a promissory note, payable ninety days after date at the Branch Bank at Lafayette, was signed by A. and indorsed by B.; blanks were left for the date, the payee's name, and the sum; and in the margin there was a printed direction to "credit the drawer," signed by B. The note in this form was submitted by A. to said bank, for the purpose of renewing a note of the same parties in bank about to become due. A., not being prepared to pay the part of the debt required, the bank refused to renew at ninety days, but was willing to do so at thirty days. A. being informed of this by the clerk of the bank, directed him to make the note payable in thirty days, which, without B.'s consent, was accordingly done, the word ninety being struck out, and thirty inserted in its place. The blanks were filled, &c.—the one for the date with the day when the old note fell due. *Held*, that B., in consequence of the change thus made in the time of payment of the note, was not liable as indorser thereof. —*Bell et al.* vs. *The State Bank*, 7 Blackf. 456.

If the indorser of a promissory note payable at a bank at A., reside four or five miles from A. in the country, and use the post office at A., it being as near his residence as any other, notice of the non-payment of the note may be given to him by putting the notice into the post office at A., directed to him there.—*Ibid.*

Parol evidence is not admissible to show that a promissory note payable on its face on a certain day, was to be paid at that time only on a contingency mentioned in a written contract between the parties made before the execution of the note.—*Miller et al.* vs. *White et al.*

In a suit on the assignment of a promissory note, it appeared that the maker had died on the 5th day of the term of the court next after the assignment, leaving considerable personal property, but not sufficient to pay his debts; that his real estate, which was sold after his decease, was not sufficient to pay the liens which were on it at the time of his death; that the note, which was previously due, was assigned about the 15th of December, 1839, and the next term of the court commenced in March, 1840. The dates of said liens were not shown. *Held*, that the maker's insolvency was not sufficiently proved to excuse the plaintiff for not having sued him.—*Black* vs. *Wilson*, 7 Blackf. 532.

Held, also, that the circumstance that several suits by other persons against the maker had abated at said term, was not sufficient, of itself, to show that the plaintiff could not have obtained judgment against him.—*Ibid.*

A protest of a promissory note negotiable and payable at a branch of the State Bank, alleging that the notary had demanded payment of the note, &c., and given notice of its dishonor, &c., is legal evidence. — *Fisher et al.* vs. *The State Bank*, 7 Blackf. 610.

One of the indorsers of such note lived about a mile from Fort Wayne. *Held*, that notice of the dishonor of the note addressed to him at Fort Wayne, and put into the post office at that place, was sufficient.—*Ibid.*

In computing the time for payment of such note, payable a certain number of days after date, the day of the date is excluded; and the demand of payment should be made on the third day of grace.—*Ibid.*

See *Herald* vs. *Harper et. al.*, 8 Blackf. 170; *Stingley* vs. *Kirkpatrick*, 8 Blackf. 186; *Athearn* vs. *Brannan*, 8 Blackf. 440; *Mahan et al.* vs. *Sherman*, 8 Blackf. 63; *Doremus* vs. *Bond*, 8 Blackf. 368.

In a suit under the statute against the maker and indorser of a promissory note, and process served on oath, the plaintiff cannot enter a *noll. pros.* as to one (who has not pleaded a matter going to his personal discharge,) and proceed to judgment against the other.—*Britton* vs. *Wheeler*, 8 Blackf. 31.

In a suit on the indorsement of a promissory note, a plea that the indorse-

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ment was made without any consideration whatever, is in substance valid.—*Shanklin* vs. *Cooper*, 8 Blackf. 41.

The payee of a promissory note which was executed and made payable in New York, having indorsed it in Indiana was sued here on his indorsement. *Held*, that the indorsement must be governed by the law of New York; and that if the diligence necessary by the law of that State to fix the indorser had been used, the defendant was liable.—*Ibid.*

Held also, that an instrument of writing purporting to be a protest of said note, with a certificate of notice to the indorser, by a notary public in New York, was admissible evidence in said suit for the plaintiff, under the statute, without proof of its execution.—*Ibid.*

A note sued on was as follows: "$231 15. Ten days after date, we, the trustees of the Methodist Episcopal church in Rockport, promise to pay to the order of J. and I. Mears three hundred and thirty-three dollars and fifteen cents for value received. Rockport, Ind., July 25th, 1842. John W. Graham, W. Dunn, John E. Cotton, Alexander Britton, Oliver Morgan, Trustees of the M. E. church." *Held*, that the defendants were liable in their individual capacities.—*Mears et al.* vs. *Graham et al.*, 8 Blackf. 144.

In ascertaining the amount of said note it was held that the words in the body, not the figures in the margin, should govern.—*Ibid.*

In a suit on the assignment of a promissory note, the declaration stated that the term of the court at which the plaintiff had obtained judgment against the maker was adjourned on the 7th of September, 1839, and that a *fi. fa.* issued on the judgment on the 21st of the same month. *Held*, that the declaration showed, *prima facie*, sufficient diligence in taking out execution.—*Clark* vs. *Spears*, 8 Blackf. 302.

A promissory note was assigned after the death of the maker, and after his estate had been declared insolvent by the probate court; but it appeared that a dividend, uncertain in amount would be paid to the creditors. The assignee without waiting to receive the dividend sued on the assignment. *Held*, that the suit would not lie.—*Hardesty* vs. *Kinworthy*, 8 Blackf. 304.

In a suit commenced before a justice of the peace, by the assignee against the assignor of a promissory note, the note and assignment may be filed as a cause of action.—*Ibid.*

Assumpsit on the indorsement of a promissory note. *Held*, that the facts set out in the record showed that the plaintiff had used sufficient diligence without effect, to collect the money from the maker of the note, to render the indorser liable.—*Watson* vs. *Robertson*, 8 Blackf. 386.

A note for the payment of money on a contingency, may, under the statute, be the foundation of an action brought by the payee or assignee; and the consideration for which such note was given need not therefore be averred.—*Nicholas* vs. *Woodruff*, 8 Blackf. 493.

But were it not for the statute, a note so payable, though containing the words "value received," could not be sued on as a cause of action.—*Ibid.*

See *Louden* vs. *Walpole*, 1 Carter's Ind. Rep. 319; *Williams et al.* vs. *Williams, Admr.*, 1 Carter's Ind. Rep. 450; *Mountjoy* vs. *Adair*, 1 Carter's Ind. Rep. 254; *Ewing* vs. *Sills*, 1 Carter's Ind. Rep. 125; *Hurd* vs. *Ind. Mutual Ins. Co.*, 1 Carter's Ind. Rep. 162; *Barnhart* vs. *Seeley et al.*, 1 Carter's Ind. Rep. 183; *Wardens, &c., St. James Church, &c.* vs. *Moore*, 1 Carter's Ind. Rep. 289; *Clark* vs. *Snelling*, 1 Carter's Ind. Rep. 382; *Nimmon* vs. *Worthington*, 1 Carter's Ind. Rep. 376; *Corning* vs. *Strong*, 1 Carter's Ind. Rep. 329.

If the holder of a note for the payment of money take from the maker, in consideration of the sum due on that note, a new note for the amount, payable with illegal interest, he has no right, afterwards to surrender the new note, and recover from the maker the amount of the old one with legal interest.—*Justice et al.* vs. *Charles*, 1 Carter's Ind. Rep. 32.

The maker is liable in such case only for the amount of the new note without interest.—*Ibid.*

A note payable with illegal interest may be declared on as a note payable without interest.—*Ibid.*

The judgment for the plaintiff in this case being for more than was due, he was permitted to cure the error by entering a *remittur* in this court for the excess. —*Ibid.*

Suit by the assignee against the assignor of a note. Suit was not brought against the maker of the note until five months after the date of assignment, and nothing was made. It was proved that, at the time of the assignment, the defendant stated to the plaintiff that the maker was poor, had been unfortunate, and if plaintiff would wait awhile he would get his money. The defendant demurred to this evidence, and obtained judgment on the demurrer. *Held*, that the jury

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might have inferred that the plaintiff's delay in suing the maker was authorized by the defendant, and no *laches* could be imputed to him on account of such delay, and that plaintiff had a right to recover on the evidence.—*Brown* vs. *Robbins*, 1 Carter's Ind. Rep. 82.

When the date of the assignment is not given, it is presumed to be the same as the date of the note.—*Ewing* vs. *Sills*, 1 Carter's Ind. Rep. 125.

If the indorsee sue the maker, and fail on the plea of *non est factum*, the indorser is not bound by this judgment, if notice was not given him of the pendency of the suit.—*Ibid.*

The indorsee, in order to recover the costs of suit against the maker, in such case, is bound to prove, by other evidence than the record, that the suit against the maker was rightly decided. The record in that case, is no more, at least, than *prima facie* evidence of that fact.—*Ibid.*

One of two joint makers of a note cannot render his co-joint debtor liable with him for the money borrowed.—*Hamilton et al.* vs. *Seaman et al.*, 1 Carter's Ind. Rep. 185.

The payee of a note for 500 dollars sold it to a third person, and at the request of the latter, the maker, who was present, took up the note, and executed to him five other notes for 100 dollars each. *Held*, that in a suit on these new notes the maker could not prove a failure of consideration for the original note.—*Williams* vs. *Rank*, 1 Carter's Ind. Rep. 230.

A note made payable to parties in their individual names, and assigned by one of the firm in the partnership name, can be given in evidence under the plea of *non-assignment*, in a suit by the assignee, against the maker, without further proof that the other partner authorized the assignment.—*Mick* vs. *Howard*, 1 Carter's Ind. Rep. 250.

If several promissory notes payable at different times, be given for the purchase money of land sold to the maker, and it is stipulated that, on payment in full, the purchaser is to have a conveyance of the land, a suit on the notes, after they have all become due, will not lie unless there has been a conditional tender of a deed for the land.—*Hook* vs. *Nebeker*, 1 Carter's Ind Rep. 257.

The holder of commercial paper, assigned as collateral security, is a holder for a valuable consideration, but, in a suit on such paper, he can recover no more than the debt actually due him, if any part of it has been previously paid, or there is no consideration as between the original parties.—*Valette* vs. *Mason*, 1 Carter's Ind. Rep., 288.

If a person draw a bill directly on himself, it is his promissory note, and may be sued on as such.— *Wardens &c. of St. James Church, &c.* vs. *Moore*, 1 Carter's Ind. Rep. 289.

It is not necessary to prove the indorsement of a note by an agent, unless the indorsement is denied under oath.—*Nimmon* vs. *Worthington*, 1 Carter's Ind. Rep. 376.

An agreement made by the holder of a promissory note, not to sue on the note for a limited time, is no bar to a suit brought before the expiration of the given time.—*Clark* vs. *Snelling*, 1 Carter's Ind. Rep. 382.

Promissory notes which are tendered in payment should be indorsed.—*Streeter* vs. *Henley*, 1 Carter's Ind. Rep. 401.

A note payable in property may be declared on without setting out the consideration.—*Ibid.*

An open book account cannot be assigned so that the assignee can sue thereon in his own name.—*Newman* vs. *Vickery*, 1 Carter's Ind. Rep. 470.

Debt on a promissory note given for the rent of certain lands leased to the defendant by the administrator for one year. The defendant proved that during the term of his lease a portion of said lands were sold to pay the debts of the intestate, but the defendant occupied the premises to the full end of his term. *Held*, that these facts did not constitute a sufficient defense.—*Life* vs. *Secrest*, 1 Carter's Ind. Rep. 512.

A due-bill payable in bankable paper "when wanted," is payable on demand, and will not draw interest until demand is made.—*Goodwin* vs. *Huzzard*, 1 Carter's Ind. Rep. 514.

In a suit by the assignee against the assignor of a promissory note, it is not necessary to prove the execution of the note; and if the note is a forgery, the indorser is liable on his indorsement.—*Hamilton* vs. *Pearson*, 1 Carter's Ind. Rep. 540.

A note is *prima facie* evidence of a settlement between the parties at the time of its date; and, in a suit on a note, the payee should not have judgment on his set-off, the items of which accrued before the date of the note, without evidence adduced to remove the presumption of settlement.—*Campbell* vs. *Hays*, 1 Carter's Ind. Rep. 547.

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CHAPTER 78.

AN ACT for the Regulation of the Penitentiary.

[APPROVED, MAY 27, 1852.]

Officers.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the officers of the penitenitary shall consist of the lessee, warden, chaplain, and physician.

Present lessee to continue in office.

SEC. 2. The present lessee and his personal representatives shall hold such office until the 15th of June, 1856, according to the terms of his contract with the State, as expressed in [an] act entitled "an act to lease the Indiana State Prison, and for other purposes," approved January 16th, 1846, and "an act amendatory thereto," approved January 16th, 1849, and such other terms as have been or may be mutually agreed between the State and such lessee.

Warden, tenure of his office, &c.

SEC. 3. The warden shall be elected by a majority of the voters on a joint ballot of the General Assembly, and shall hold his office for four years: *Provided*, that the present warden shall hold until the adjournment of the General Assembly in the year one thousand eight hundred and fifty-five.

When warden may be removed.

SEC. 4. The Governor may remove such warden and appoint a successor to fill the unexpired term, for;

First. Habitual drunkenness;

Second. Neglect of his official duties;

Third. Cruel or inhuman treatment of the prisoners;

Fourth. Removal of his residence from the vicinity of the penitentiary, or inability from long continued illness to discharge his duties;

Fifth. If he shall become interested in the profits of the penitentiary.

Duties of warden.

SEC. 5. The warden shall reside in the vicinity of the penitentiary and prescribe rules for the government and police thereof, to be approved by the Governor, and enforce the same; and order bodily punishment to be inflicted on the prisoners when necessary to enforce dicipline and preserve order; but he shall not reduce the daily hours of labor below ten, nor excuse any convict from labor on account of alleged indisposition.

Bodily punishment, when inflicted.

SEC. 6. No bodily punishment shall be inflicted on any prisoner, except by order of such warden; but if he shall habitually refuse to order the same, when necessary, and insubordination ensue in consequence, it shall be cause of removal by the Governor.

Warden to report to Gen. Assembly.

SEC. 7. The warden shall report to each branch of the General Assembly at every session thereof, a statement, showing the condition of such prison and the convicts therein confined, the names of such convicts, the names of all who have died or been discharged, or escaped since his last report,

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the offence for which each convict, so named, was imprisoned, and the county where such offense was committed; and in case of discharge, whether by pardon or expiration of sentence, and he shall append to such report such suggestions and recommendations as he may deem of utility.

Prison library. SEC. 8. The warden shall superintend the State Prison library and the loaning of the books thereof to the convicts, and for the purpose of purchasing books for such library, there is appropriated annually out of the general fund the sum of fifty dollars to be expended by the warden under the direction of the Governor.

Deputy warden. SEC. 9. The warden during a temporary absence, not to exceed thirty days, may appoint a deputy who shall discharge his duties in his absence, and shall be paid by such warden.

Chaplain. SEC. 10. The chaplain of the penitentiary shall be appointed by the Governor and shall hold his office for one year.

Duties of chaplain. SEC. 11. Such chaplain shall preach at least once every Sunday to the convicts; shall visit them when sick and superintend their burial when dead.

Physician. SEC. 12. The physician to the penitentiary shall hold his office for one year, and be appointed by the Governor.

Duties of physician. SEC. 13. Such physician shall visit, or cause the same to be done by some other competent physician, the prison at least once every day before nine o'clock A. M., to hear and examine into the complaints of illness by the prisoners, and excuse from labor such convicts as he may deem unable to labor, and visit and prescribe for all such convicts, as often as their cases respectively may require, and perform or cause to be performed all necessary surgical operations, and the medicines prescribed or treatment directed by him shall be furnished and complied with at the expense of the lessee.

Convict discharged, to be furnished with clothing. SEC. 14. Every convict who has served six months, shall, when discharged, be furnished by the lessee with one suit of decent clothing, three shirts and five dollars in money; for which such lessee shall be allowed in his settlement with the State.

Goods belonging to convict to be given up on his discharge. SEC. 15. Any article of value which such convict may have in his possession, when delivered into the custody of the lessee, shall be carefully preserved by such lessee and delivered to such convict when discharged, or to any other person that such convict may direct at any time previous to such discharge.

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CHAPTER 79.

AN ACT regulating the licensing of Pilots at the Falls of Ohio, requiring bond and security of such Pilots, prohibiting any unlicensed person from acting as such Pilot, and providing for the compensation of such Pilots, and the revocation of their licenses.

[APPROVED JUNE 15, 1852.]

Governor to grant license for 4 years.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, The Governor shall from time to time, grant to such number of skillful persons as he may think proper and necessary, not to exceed eight in number, license for the term of four years, authorizing and empowering such person to pilot boats over the falls of the Ohio.

Bond.

SEC. 2. Before any person, licensed as aforesaid, shall act as such pilot, he shall execute bond, payable to the State of Indiana, with sufficient sureties, to be approved by the clerk of the circuit court of Clark county, in the penalty of five thousand dollars, conditioned for the faithful discharge of his duties as such pilot; which bond shall be filed in the office of such clerk for the use of persons injured by such pilot as such, and shall not be void upon a mere recovery until the penalty is exhausted.

Penalty for piloting without license.

SEC. 3. Every person not licensed, as aforesaid, who shall openly or covertly act as such pilot, shall be liable to pay twenty dollars for the use of common schools, to be recovered in an action of debt, in the name of "the auditor of Clark county for the use of such county," before any justice of the peace in said county: *Provided*, that any *bona fide* owner or navigator of a boat, descending or ascending the Ohio river, may navigate said falls at his own risk.

Fees.

SEC. 4. Such pilots shall receive for their services such fees as may, from time to time, be fixed by the board of commissioners of the county of Clark; which tariff of fees shall be published at least once a year in some newspaper published in said county, and posted up in three public places in the town of Jeffersonville.

License may be revoked.

SEC. 5. The board of commissioners of the county of Clark may revoke such license at any time for incapacity, habitual drunkenness, change of domicil or neglect of duty; ten days' notice having been given to such pilot. Such pilot may appeal from such revocation to the circuit court of Clark county within ten days; giving appeal bond in the penalty of one hundred dollars, to be approved by the board of commissioners of the county of Clark.

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CHAPTER 80.

AN ACT authorizing the construction of Plank, McAdamized, and Gravel Roads.

[APPROVED MAY 12, 1852.]

How companies may be formed.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any number of persons may form themselves into a corporation for the purpose of constructing or owning a plank, McAdamized or gravel road by complying with the following requirements: they shall unite in articles of association setting forth the name which they assume, the line of the route, and the place to and from which it is proposed to construct the road, the amount of capital stock, and the number of shares into which it is to be divided, the names and places of residence of the subscribers, and the amount of stock taken by each shall be subscribed to said articles of association. Whenever the stock subscribed amounts to the sum of five hundred dollars per mile of the proposed road, copies of the articles of association shall be filed in the office of the recorder of each county through which the road is to pass, and shall from that time be a corporation known by the name assumed in its articles of association.

Election of directors.

SEC. 2. Not less than three nor more than seven directors shall be elected by the stockholders of every such corporation, who shall hold their office for one year and until their successors are in like manner elected; notice of the first election for directors shall be given by two weekly publications in some newspaper printed on or near the route of the road.

Directors shall determine the manner of construction.

SEC. 3. The directors may determine the particular manner of construction so as to secure and maintain a smooth and permanent road, the track of which shall be made either of plank, stone, gravel, or other hard material, or in such proportions of either as the directors may deem expedient, so that the same shall form a hard and even surface.

Location of road.

SEC. 4. The directors of said company shall proceed to locate and lay out said road, and may with the consent of the board of county commissioners of the county locate the same over and upon any state or county road, or other public highway, entered of record and granted upon such conditions as to such board may seem just and reasonable, and thereupon such state or county road or other public highway, or such portions thereof as may be so occupied or appropriated by said company, shall be and become the property of said company for the purpose of making and maintaining said road and the gates and toll houses thereon; and the board of county commissioners of the several counties of this State are hereby authorized to give their consent to the appropriation and occupation of any such state or county road or other public high-

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way, over and upon which any company may locate any such road.

Company may take conveyances of land.

SEC. 5. Any such company may take releases and conveyances of the necessary lands of any and all persons over whose lands the road may be located, and any such releases or conveyances may be made and executed by any infant, feme covert, guardian, executor or administrator, and shall be valid and effectual in law by obtaining the consent of the proper probate court thereto.

Right to enter upon lands and use materials.

SEC. 6. For the purpose of constructing and locating said road, it shall be lawful for such company, by their agents or persons in their employ, to enter upon the lands, to make surveys or estimates, and to take from the land occupied by said road, any stone, gravel, timber, or other material necessary to construct said road and the bridges thereon.

Proceedings in case of refusal of right of way.

SEC. 7. In all cases where any person through whose land said road shall run, shall refuse to relinquish the same, or where a contract between the parties cannot be made for the land, it shall be lawful for such company to give notice to some justice of the peace in the county where such difficulty may occur, and that such facts do exist; and such justice shall thereupon summon the owner of such land to appear before him on a particular day within ten days thereafter. In case of infants and insane persons, if there be a guardian, resident of the county where the land is situated, he shall have at least ten days' notice of the time and place of trial; and when there is no guardian, notice shall be posted up in three of the most public places in the township where the land is situated, at least three weeks prior to the day of trial, and in case of non-residents, the same notice shall be given as is required in the case of infants having no guardian, and shall also cause to be summoned three disinterested persons, and cause them to come before him, who, after being legally sworn as jurors, faithfully and impartially to assess the damages, if any, shall proceed to hear the testimony and view the land, and after having taken into consideration the disadvantages the road may be to the same, report thereon in writing, whether such person is entitled to damages or not, and if so, how much; which report shall be filed with such justice, who shall enter judgment thereon, unless for good cause shown, and in case either party show good cause why judgment should not be entered, the justice may grant a review of the same, either with or without costs; *Provided*, that either party may at their option, appeal the same to the circuit court of the proper county as in other cases, and such court shall appoint viewers as above directed, who may report to that or the succeeding term, in the discretion of the court, and the judgment of the circuit court shall be final between the parties.

Same.

SEC. 8. In all cases where the owner is a minor or insane person, or shall reside out of the county where such land may be, such justice shall cause three notices to be stuck up, of

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the time and place of appointing viewers, and if no persons appear he may adjourn the trial for two weeks, at the end of which time he shall appoint a guardian *ad litem* or committee to act for such minor or insane person, as the case may require, in the suit aforesaid; but such appointment need not be made if the guardian at law or the committee of the estate appear to defend, and he shall proceed as in other cases, and on judgment rendered and the corporation complying therewith by the payment of costs and damages against it, the corporation shall be seized of the lands; costs shall be awarded or allowed against either party at the discretion of the jury.

Appeal not to prevent company from proceeding.

SEC. 9. On cases of any appeal from the judgment of any justice of the peace, upon any report of any jury for the appraised amount of damages, touching the right of way, or for lands taken for the purpose of constructing thereon the road of such company, as provided in this act, such appeal shall not prevent such company from proceeding in the construction of its road over such lands, nor deprive it of its right of entry thereon for that purpose, which right is hereby expressly granted: *Provided*, that before such company shall so enter and construct its road, it shall either tender to the owner of said lands the full amount of damages which shall h ave been adjudged to him or her, or shall pay the same into the court to which such appeal may be taken, subject to the order of said court, and every such appeal shall be taken in twenty days from the rendition of said judgment, and not afterwards; and the acceptance of the amount of the judgment, when tendered, shall, in all cases, be taken to be a waiver of the right to appeal; and a certified copy of the transcript of the judgment of the said justice of the peace, or the court to which such appeal shall be taken, may be taken by the company and caused to be recorded in the recorder's office of the county where said lands are situate; and such record shall be notice to all the world of the right of the company. And if, in case of any appeal, judgment shall be recovered against such company for a larger amount than was recovered before said justice, then such company shall, within sixty days from the date of said judgment, pay the difference between the amount of the judgment before the justice and that before the said court, in case the amount of the judgment before the justice shall have been previously paid into court, and if not, then the whole amount of said judgment in the appellate court shall be paid to the owner of said land within the same time, or in default thereof, execution may be issued therefor. And in case it shall, at any time, be found that the said company is, or shall be in possession of land, the title to which has not been made perfect in such company, it may obtain title to the same by appraisal judgment, and the payment therefor, as in other cases provided for in this act.

Proviso.

Road out of repair, company liable.

SEC. 10. If any such road, after its completion, or any part thereof, shall be suffered to be out of repair so as to be

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impassable for the space of one year, unless when the same is repairing, said company shall be liable to be proceeded against by *quo warranto;* and if such company shall suffer the road to be out of repair to the hindrance or delay of travelers for any unreasonable length of time, they shall have no right to collect tolls thereon until the same is repaired.

Payment of subscription.

SEC. 11. It shall be lawful for the directors to require payments from subscribers to the capital stock of the sums subscribed by them, at such times and in such proportions, and on such conditions as they shall see fit, under the penalty of the forfeiture of their stock, and of all previous payments thereon, or under such other penalty or forfeiture as such company may, by law, prescribe; and they shall give notice of the payments thus required, and of the time and place when and where, at least thirty days previous to the time when such payment is required to be made, in a newspaper printed in the county, or in some one of the counties in which such road may be located, or if no newspaper is printed in such county, then by posting three written or printed notices at the most conspicuous places near where the road is proposed to be located, and at the court house of said county.

Assignment of shares.

SEC. 12. The shares of the corporation shall be deemed personal property, and shall be transferable in the manner prescribed by the by-laws; and any person becoming a shareholder by assignment of stock, shall succeed to all the rights and liabilities of his assignor, and the directors may provide for any increase of capital stock that they may deem advantageous to the corporation: *Provided*, the whole shall not exceed four thousand dollars per mile of the road.

Toll gates and tolls.

SEC. 13. Whenever three consecutive miles of such road shall have been completed, or if the whole of said road shall be less than three miles in length, then, in such case, when the whole of such road shall be completed, the directors of such company may erect toll gates at such points and at such distances from each other as they may deem it proper, and exact toll from persons traveling on the road; but on any uncompleted road of less than five miles, tolls shall be charged one year only. The tariff of tolls shall not exceed the following rates: For every sled, sleigh, carriage or vehicle drawn by one animal, one and a half cents per mile, and for every animal in addition thereto, one-half cent per mile; for every horse and rider or led horse, one cent per mile; for every score of sheep or swine, two cents per mile; and for every score of neat cattle, mules or asses, five cents per mile. Persons going to and from funerals, and soldiers of the United States or of this State, while in actual service, shall be exempt from toll.

Company, when to cease to be body corporate.

SEC. 14. Every such company or association shall cease to be a body corporate if, within two years from the time of filing a copy of their articles of association with the county

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recorder, they shall not have commenced the construction of their road, and expended at least ten per cent. of their capital stock, and if, within four years from such time, such road shall not be completed: *Provided, however*, that if it should so happen that such company should fail to complete the whole of their road within four years, then, in that case, all the rights, privileges, and franchises conferred by this act upon such company, shall be applicable to, and be the charter of such company for so much of its road as may be completed within four years, as fully and effectually as if the whole line were completed: *Provided*, that within six months after such road shall have been completed, the directors shall report such fact, together with the cost of its construction, to the Secretary of State.

Proviso.

May fill vacancies in directors, make by-laws, &c.

SEC. 15. Such company may fill all vacancies occurring in their board of directors by resignation or otherwise, by the remaining directors, at any of their meetings, and may make, enact, and publish any and all ordinances and by-laws which they may deem proper, not inconsistent with the laws of this State, in order to regulate the travel upon such road, and the rules to be observed by persons in meeting or passing with teams and vehicles, and all other matters, including the times and places of holding elections and the manner in which they shall be conducted, which may be deemed for the welfare of such company. Rules, as well as toll rates, for travel, shall be placed in full view, and legible and large letters upon, or in, each and all of the toll houses of such company on said road. Any person violating any ordinance or by-law made by such company, shall forfeit and pay to such company the sum of five hundred dollars, to be sued for and collected by such company in an action of debt before any justice of the peace of the county where the offender my be found. The company may change the line of its road whenever it may deem it of public importance, and for the improvement of the road; but shall not avoid the points mentioned in their articles of association. Such company may extend its road by procuring the consent of two-thirds of the stockholders.

Penalty for violating ordinance.

If toll-gatherer detain or over charge passenger, company liable.

SEC. 16. If any toll-gatherer or gate-keeper on said road shall unreasonably detain any person or passenger, after toll has been paid or tendered, or shall demand or receive any greater toll than is by this act allowed, the company shall, for every such offence, forfeit and pay a sum not less than three nor more than ten dollars, to be recovered before any justice of the peace having jurisdiction, by the party aggrieved, within twenty days after the occurrence.

Penalty for defrauding company.

SEC. 17. If any person or persons using any part of such road shall, with intent to defraud such company, pass through any private gate or bars or along any other grounds near said road, to avoid any toll-gate, or shall make any untrue statement as to the distance he or they may have travelled

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or intend to travel on the road, or shall practice any fraudulent means and thereby lessen or avoid the payments of tolls, or shall refuse to pay the toll he is bound by law to pay, or shall run by the gate without paying his toll, with intent to defraud the company, or if any person or persons shall haul upon any part of such road leading to any point or points to which he or they may be hauling, and shall pass through or along any other road or roads to get to such point or points without first paying his or their toll, with intent to defraud such company, each and every person concerned in such fraudulent practice shall, for every such offense, forfeit and pay to such company three dollars, which shall be recovered in the name of the company in an action of debt before any justice of the peace of the county where the offender may be found: *Provided*, nothing herein contained shall prevent persons residing in or near the line of said road from passing thereon between the gates, about their premises, for common and ordinary business. Proviso.

Penalty of agent, &c., for embezzling money of company.

SEC. 18. If any agent, treasurer, toll-gatherer, or other person to whose possession or custody any of the moneys of such company may have come or be, shall convert any of said moneys to his own use, or make way with the same in any way, he shall be deemed guilty of embezzlement, and shall be punished upon indictment found, in the same manner and to the same extent as if he had stolen the amount so embezzled. The neglect or refusal of any such person to pay over on demand to such company or their agent any moneys in his custody or possession belonging to such company, shall be deemed *prima facie* evidence that he has embezzled the same.

Property may be sold on execution either in favor of, or against company.

SEC. 19. Upon execution issued upon any judgment or decree rendered either in favor of such company, against any person or persons, or in favor of any person or persons against such company, property shall be taken and sold for the highest and best price it may bring, and without any valuation or appraisement.

Company may hold lands.

SEC. 20. Such company may purchase and hold lands to the value of not exceeding one-fifth of their capital stock, over and above such lands as may be necessary in the location and construction of such road.

May borrow money.

SEC. 21. For the completion and extension of the road of such company, it shall be lawful for such company to borrow money, either within or without this State at such rate of interest, and upon such terms, and in all respects, as may be agreed upon by the parties to such loan, not, however, exceeding the rate of interest allowed by law.

May issue bonds.

SEC. 22. Such company shall have full power and authority to issue bonds or other evidences of debt for the purpose of raising money for the completion or extension of its road, and bearing such rate of interest as such company may deem advisable, not exceeding the rate aforesaid, and such bonds or

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other evidences of debt may be sold or otherwise disposed of by such company for the purposes aforesaid.

Companies heretofore chartered may adopt the provisions of this act, &c.

SEC. 23. All existing plank, gravel, and McAdamized road companies within this State, shall respectively have and possess all the powers and privileges conferred by this act; but such company in adopting the provisions of this act shall be subject to all its liabilities and be deemed to have abandoned their former charter so far as shall regard the future government of such company, so far as the same shall be applicable thereto; but nothing herein shall impair or affect any of the franchises of any charter heretofore granted or of any company heretofore organized under the general laws of this State, or any franchises granted by any amendment thereto, and whenever any company has, under any law of this State constructed any extension of such road, and all privileges and franchises of such company shall apply to such extension, any company heretofore incorporated, or any company organizing under this act, or any person or persons may, by contract with any other company, construct branch or extension roads connecting with the main line, but the provisions of this act shall in all cases govern and apply to such branch road or extension; all acts and parts of acts coming in the purview of this act, are hereby repealed, saving, however, all the rights, privileges and franchises conferred upon any company created or existing under any law, or amendments thereto that is hereby repealed, as fully and effectually as if no law had been repealed by this act.

Legislature may alter or amend this act.

SEC. 24. The Legislature reserves the right to alter, amend or repeal this act whenever it shall be deemed conducive to the public good.

Individual liability of directors.

SEC. 25. The directors of any company that may be formed under the provisions of this act, shall be liable in their individual property for any debt they may contract in the name of the company, over and above the solvent stock of such company.

Evidence of incorporation.

SEC. 26. That in any suit for or against any company organized under this act, a certificate from the recorder of the proper county that such company has filed in his office a copy of the articles of association, as required by the first section of this act, (which copy may be filed any time within two years after their organization,) shall be sufficient evidence of their existence as a corporation, should said fact be disputed.

Company may establish ferries.

SEC. 27. When any such company shall build a road to any navigable stream of water, they are hereby authorized to establish a ferry across such stream from the end of their road, and to transport thereon all persons or property from or to their said road across such stream, and to charge and receive such rates of toll therefor, as may be established by the board doing county business of the county in which such ferry is situate, and said board is hereby empowered to fix said tolls, and all persons travelling upon such ferry shall be

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liable to pay the tolls therefor under like penalties as are prescribed as to persons traveling upon such road.

Bridge toll.

SEC. 28. As bridge toll on any bridge costing fifteen hundred dollars or more erected on any such road by the company constructing such road, the company may charge one mile's toll for the first fifteen hundred dollars cost of such bridge, and one third of a mile's toll for every additional five hundred dollars up to seven thousand five hundred dollars, and no more: *Provided*, That before such bridge toll is so charged the president of such company shall have made and filed in the proper clerk's office an affidavit setting forth the amount expended by such company on such bridge.

Proviso.

This act, when to take effect.

SEC. 29. This act to take effect and be in force from and after its passage, publication, and circulation in the several counties in this State.

CHAPTER 81.

AN ACT for the relief of the Poor.

[APPROVED JUNE 9, 1852.]

Township trustees overseers of poor.

SECTION 1. [*Be it enacted by the General Assembly of the State of Indiana,*] That the township trustees of the several civil townships of this State, shall be the overseers of the poor within their respective townships, and shall perform all the duties with reference to the poor of their respective townships that may be prescribed by law.

Shall be so designated.

SEC. 2. Every board of trustees and the members thereof, shall, in discharging the duties prescribed in this act, be designated "Overseers of the Poor."

Suits pertaining to poor, how conducted.

SEC. 3. In all suits and proceedings in favor of or against any such board of trustees connected with or pertaining to the poor of the respective townships, the same shall be conducted in favor of or against such township in its corporate name.

Every county to support its own poor.

SEC. 4. Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in the forty-sixth section of this act is provided.

How settlement is acquired, by persons entitled to relief.

SEC. 5. Legal settlements may be acquired in any county, so as to oblige such county to relieve and support the persons acquiring such settlement, in case they are poor and stand in need of relief, as follows:

First. A married woman shall always follow and have the settlement of her husband, if he have any within the

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State, otherwise her own at the time of marriage, and if she then had any settlement, it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have the settlement.

Second. Legitimate children shall follow and have the settlement of their father, if he have any within the State, until they shall gain a settlement of their own; but if the father have no settlement, they shall, in like manner, follow and have the settlement of their mother, if she have any.

Third. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within the State; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

Fourth. Every male person, and every unmarried female over the age of twenty-one years, who shall have resided in any county in this State one whole year without interruption, shall thereby gain a settlement in such county.

Fifth. Every minor whose parent, and every married woman whose husband has no settlement in this State, who shall have resided one whole year without interruption, in any county in this State, shall thereby gain a settlement in such county.

Sixth. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

Seventh. Every settlement, when once legally acquired, shall continue until it shall be lost or defeated by acquiring a new one in this State, or by willful and uninterrupted absence from the county in which such legal settlement had been gained, for one whole year or upwards; and upon acquiring a new settlement, or upon the happening of such wilful and uninterrupted absence, all former settlements shall be defeated and lost.

And the provisions of this section shall apply to cases of settlements begun to be acquired, or lost, or defeated, as well before as after the provisions of this act shall go into effect.

Overseers to have care of poor.

SEC. 6. The overseers of the poor in each township, shall have the oversight and care of all poor persons in their township, so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner required by law.

Duty of overseers when there is no common poor-house.

SEC. 7. It shall be the duty of the overseers of the poor, in such counties as have in them no common poor house established by law, two weeks next preceding the first Monday of May, in each year, to give public notice, by having published in the newspaper or newspapers in their respective

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counties, or by posting upon the court house door and in other public places in such counties, an advertisement certifying the poor that are to be provided for, and asking for sealed proposals for their maintenance during said year: which sealed proposals shall be opened and acted on by said overseers on said day; but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions at any time for the keeping of such poor persons as may in the interim become a county charge, or of rejecting the propositions of such persons as they know to be unable to fulfil their obligations to said poor.

County board may make allowance to pauper.

SEC. 8. The board of county commissioners may, in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound mind, and who, from their general character, will probably be benefitted thereby, and also to the parents of idiots, and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for said children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance.

Duty of overseers on complaint in behalf of poor.

SEC. 9. It shall be the duty of said overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint; and if, in their judgment, the poor have not been sufficiently provided with the common necessaries of life, or have, in any respect, been ill treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed to such persons keeping them, as such overseers may deem reasonable and proper, and remove said poor and place them in the care of some other person.

Poor-book.

SEC. 10. The said overseers of the poor shall enter in the poor book of their respective townships, all poor persons in their townships who are unable to take care of themselves, and who shall, in their judgment, be entitled to the benefit of the provisions of this act, together with the date of such entry.

If overseers refuse relief, county board may order it.

SEC. 11. If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the township in which he or she resides shall refuse to give such person the benefit thereof, upon application of such person the board of county commissioners may, if they shall think proper, direct the said overseers to receive him or her upon the poor list on his or her application therefor.

When settlement cannot be determined.

SEC. 12. If any one within the description of poor persons specified in this act, shall be found in any county or township, and the overseers of the poor of such township shall be unable to ascertain and establish the last place of legal settlement of such person, they shall proceed to provide for such poor person in the same manner as other persons are hereby directed to be provided for.

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Person not having legal settlement may be relieved.

SEC. 13. Whenever any person entitled to temporary relief as a pauper, shall be in any township in which he has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief by placing him or her temporarily in the poor house of such county, if there be any, to be employed therein so far as he or she is capable of any employment.

Justice may order person likely to become charge, to be sent to where he belongs.

SEC. 14. Upon complaint of any overseer of the poor, any justice of the peace may, by his warrant, directed to and to be executed by any constable, or by any other person therein designated, cause any poor person found in the township of such overseers likely to become a public charge, and having no legal settlement therein, to be sent and conveyed at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be so removed, such person shall be relieved by said overseers whenever such relief is needed.

Appeal in such case.

SEC. 15. If the overseers of the poor of any township in any county in this State, to which any pauper shall have been removed as above provided, shall feel themselves aggrieved by such order of removal, they may, at any time within twenty days after such removal, shall be known to them, appeal from the decision of the justice ordering such removal, to the court of common pleas of the county from whence the removal was ordered to be made, such appeal to be taken, tried and determined, and costs adjudged, as in other cases of appeals from the judgment of a justice of the peace, and the order of removal may be vacated or affirmed according to the law and the right of the case.

Appeal, when to be heard.

SEC. 16. Such appeal shall be heard at the term of the court next after the same is filed therein, if in the opinion of the court, reasonable notice of the appeal has been given to the opposite party; but if not thus given, the cause shall stand continued until the next term of the court, and notice of the appeal be then given, if not before done.

Defective order may be amended.

SEC. 17. If the order of removal is defective, the court shall permit the same to be amended without costs, and after such amendment is made, the appeal shall be heard and determined as if such order had not been defective.

When person has been removed, proper overseers shall receive him.

SEC. 18. If any person be removed by virtue of the provisions of this act, from any county, township, or place, to any other place within this State, by warrant or order, under the hand and seal of any justice of the peace, as hereinbefore provided, the overseers of the poor of the township or place to which said person shall be removed, are required to receive such person, if he have a legal settlement in their county.

Money on contract for keeping poor, how paid.

SEC. 19. The overseers of the poor shall make a return to the county auditor of the sums of money required for the poor of their respective townships, within fifteen days after every such contract hereinbefore provided for shall have

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been made, which sums shall be paid quarterly out of the county treasury, upon the order of the board of county commissioners, in the same manner as other claims of the county are paid.

Compensation of overseers.

SEC. 20. The overseers of the poor in each township in the State shall be entitled to receive each one dollar per day for each and every day during which they shall be necessarily employed in the discharge of their several duties, to be allowed by the board of county commissioners on being satisfied of such service having been performed.

Overseer removing or dying, papers delivered to other overseers.

SEC. 21. If any overseer shall remove out of his proper township, he shall, previous to his removal, deliver over to some other overseer of the township, from which he shall be so removing, all books, papers and other things concerning his office; and upon the death of any overseer, his executors or administrators, shall, within forty days after his decease, deliver over all things belonging to his office to some other overseer.

Accounts, when presented, how paid.

SEC. 22. The overseers of the poor of the several townships shall annually at the June session of the board of county commissioners of their respective counties, present their accounts, and make report to said board generally of their proceedings for the past year, and when said board shall audit or allow any claim or account presented by such overseers of the poor, they shall draw on the county treasurer therefor, whose duty it shall be to pay the same out of any money in the county treasury not otherwise appropriated.

County board to settle with overseers.

SEC. 23. The boards of county commissioners of the several counties are hereby directed to settle with the overseers of the poor in the several townships of their respective counties, at least once in every year, and oftener if they shall deem the same necessary, and also to make to such overseers a reasonable compensation for their services.

Duty of overseers to sick; funeral expenses.

SEC. 24. It shall be the duty of the overseers of the poor on complaint made to them that any person not an inhabitant of their township is lying sick therein, or in distress without friends or money, so that he or she is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any township, who shall not leave money or other means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such township, to employ some person to provide for and superintend the burial of such deceased person; and the necessary and reasonable expenses whereof shall be paid by and upon the order of such overseers; and the board of county commissioners of the proper county, at any meeting of such board, shall examine all claims arising under the provisions of this section, and if found reasonable, shall direct the same to be audited and paid out of the county treasury.

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Asylum for poor.

SEC. 25. It shall be lawful for the board of county commissioners in the several counties of this State, whenever they may deem it advisable to purchase a tract of land in the name of their respective counties, and thereon to build, establish, and organize an asylum for the poor, and to employ some humane and responsible person or persons, resident in their respective counties, to take charge of the same, upon such terms and under such restrictions as the board shall consider most advantageous for the interest of the county, who shall be called the "superintendent of the county asylum." And where two or more counties shall have jointly purchased any tract of land, and erected an asylum for the poor of their several counties, they shall have the power to continue such joint ownership during their pleasure; and it shall be lawful for the county commissioners of two or more counties to jointly purchase lands, erect asylums, or do other things proper and necessary for the relief and comfort of the poor within the counties forming such joint ownership, as is by this act provided for respective counties.

Duty of superintendent.

SEC. 26. It shall be the duty of such superintendent or superintendents to receive into his or their care and custody all persons who may become a county charge as paupers, and to take such measures for the employment and support of such paupers and to perform such other duties as the board of county commissieners shall, from time to time establish, order and direct, consistent with the laws of this State.

Physician.

SEC. 27. It shall be the duty of the county commissioners to appoint, annually, a well qualified physician to attend the county asylum, and allow him a reasonable compensation for his services.

Binding out poor children.

SEC. 28. It shall be the duty of the overseers of the poor of the different townships, and also of the superintendents of the county asylums, to bind out such poor children as fall under their care and charge from time to time, and it shall also be the duty of said overseers to see that children, so bound, be properly treated by the persons to whom they are bound, and to take legal means for redress in case of maltreatment.

Tax for purchase of land and erection of building.

SEC. 29. To raise the sum necessary for the purchase of land and the erection and furnishing of the buildings for such asylums, the boards of county commissioners in the several counties shall have power to assess a tax on property liable to be assessed for raising a county revenue, not exceeding one-fourth in addition to the rates at which such property may be assessed by the existing laws.

Removal of paupers to asylum.

SEC. 30. So soon as the necessary provisions may be made by the erection of suitable buildings the said board shall direct and order that all persons who have become permanent charges as paupers on the county, be removed to such asylum and shall take such measures for the employment and support of such paupers as they may deem advisable; and thereafter the overseers of the poor shall, from time to time, as persons

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may become permanent charges to their respective townships as paupers, have such persons removed to the said asylums.

Superintendent's bond and reports.

SEC. 31. Such superintendent or superintendents shall give bond, with freehold security, to said board in the penalty of five hundred dollars, conditioned for the faithful discharge of his or their duty; and he or they shall make to such board at their sessions in the spring and fall, annually, a detailed report in writing, of the time and manner of the admission of each pauper; their health and fitness to labor; the results of their industry, and the expenses incurred, and it shall be the duty of the members of such board, in person, annually to inspect said asylum with regard to its fitness, in all respects, for the objects of its establishment.

Education of poor children.

SEC. 32. Whenever it shall be necessary and practicable, poor children of the asylums who cannot be bound out, or whom it may not be expedient to bind out as apprentices, they shall be educated thereat.

Duty of supt. in relation thereto.

SEC. 33. It shall be the duty of the superintendent or superintendents of any asylum erected or established by law, to superintend and direct the education of such poor children, according to the preceding provisions of this act, and for the purpose of carrying the same into effect with the least possible expense, it shall be the duty of said superintendent to send them to the common school in the township in which the asylum is situated, during the continuance of its session.

Asylum may be discontinued.

SEC. 34. Any asylum or farm, provided by the board of county commissioners for the poor, may be discontinued by such board and the property, real and personal, relating thereto, which belongs to the county, may be sold, leased or otherwise disposed of, or appllied in such manner as may be best for the interests of the county.

Tax for support of poor.

SEC. 35. The boards of county commissioners in the several counties of this State may, if they deem it expedient, annually, at their session at which the county tax is ordered to be levied and assessed, levy and assess a tax for the support of the poor of their respective counties, on objects from which the county revenue is or may be directed to be raised; the tax hereby authorized to be laid shall be collected by the same officers whose duty it may be to collect the State and county revenue, who shall pay the same accordingly into the county treasury.

Decisions of justices may be appealed from.

SEC. 36. All decisions of any justice of the peace in any matter, proceeding, or suit, authorized by this law, may be appealed from in like manner, and under like regulations and restrictions of law as in other cases.

Board of visiters.

SEC. 37. The board of county commissioners of any county may, in their discretion appoint a board of visiters annually, to consist of one person from each township in the county, or a less number of persons, as they may think best, to visit, at least once during the year, the asylum of such county, and to report to the commissioners its conditon, and

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the treatment, management, and condition of the inmates thereof.

Their compensation.

SEC. 38. Such visiters shall receive such compensation as the board shall adjudge reasonable.

CHAPTER 82.

AN ACT in relation to applying certain funds therein named to the payment of the Public Debt.

[APPROVED JUNE 18, 1852.]

Tax to be levied.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana,* That there shall be levied in each and every year on the taxable property of this State, two cents on the hundred dollars, for the reduction and ultimate extinction of the public debt: *Provided*, such tax shall not apply to this current year.

Tax, how charged and kept.

SEC. 2. The several county auditors shall enter in a separate column on their respective tax duplicates and opposite the name of each person chargeable therewith, the tax levied pursuant to this act; and the same, when collected, shall be kept as a separate fund, and an account made thereof upon the books of the treasurer and auditor respectively, in like manner as other specified taxes.

What funds applied to payment of principal.

SEC. 3. That all the revenues derived from the sale of any of the public works belonging to the State, and the net annual income thereof; and any surplus that may remain in the treasury derived from taxation for general purposes, after paying the ordinary expenses of government and interest on the State stocks, other than the original bonds not surrendered, and the State bank bonds be applied towards paying the principal of the State debt as hereinafter provided.

Sinking fund for redemption of five, and two and a half per cents, how created.

SEC. 4. For the purpose of creating a sinking fund for the redemption of the "five" and "two and a half per cent." bonds chargeable upon the Treasury of the State, and issued under the provisions of an act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville, approved January 19, 1846; and an act supplemental thereto, approved January 27, 1847, there shall be three commissioners, entitled "State debt sinking fund commissioners," to consist of the Auditor, Treasurer, and Agent of State.

Duty of agent of State.

SEC. 5. The Agent of State, under the direction of such commissioners, shall invest the moneys applicable therefor in the purchase of the bonds specified in the preceding section.

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Bonds, how taken in and kept.

SEC. 6. The bonds shall be taken in the name of the Auditor of State for the use of the "State debt sinking fund," and shall be deposited and kept in the office of such auditor. The interest accruing thereon shall be paid semi-annually as on other bonds of the State, and shall be invested in the further purchase of the bonds aforesaid in the same manner as the original fund is directed to be invested.

Registry of bonds purchased.

SEC. 7. The Agent of State shall keep a registry of the bonds so purchased, which shall show the date, number, and amount of every such bond, to whom issued, from whom purchased, and the date thereof, and the sum paid therefor; and he shall cause an abstract of such registry to be filed with the Auditor of State in June and December of each year, and shall also embody the same in his annual report to the General Assembly.

Auditor to keep record of same.

SEC. 8. The Auditor of State shall keep a record of all such bonds, and shall state in his annual report to the General Assembly, the number, description, and amount thereof; the amount of interest received thereon, and how the same is invested, and such other matters as he shall deem of public interest.

Meeting and duty of commissioners.

SEC. 9. The commissioners of the State debt sinking fund shall hold an annual meeting in Indianapolis in December of each year, and make such orders for the purchase of bonds herein provided as will best secure the objects contemplated by this act; and it shall be their further duty to report to the General Assembly within ten days from the commencement of each session thereof, the condition of such sinking fund, together with such other matters relating to the same, as may require in their judgment legislative action.

Special meetings.

SEC. 10. Such commissioners shall hold special meetings whenever any two of them shall deem it necessary, or the Governor of the State shall require it.

CHAPTER 83.

AN ACT to provide for the incorporation of Rail Road Companies.

[APPROVED MAY 11, 1852.]

Proceedings to form a corporation.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any number of persons, not less than fifteen, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements:

Whenever stock to the amount of at least fifty thousand

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dollars, or one thousand dollars for each and every mile of the the proposed road shall have been subscribed, the subscribers to such stock shall elect directors for such company from their own number, and shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the amount of the capital stock of the company, (which may be increased from time to time, if necessary, to a sum equal to the actual cost of constructing the road, together with the cost of the right of way, and motive power, together with all other appurtenances and expenses necessary for the completion and running of such road,) the number of shares of which said stock shall consist; the number of directors, and their names, to manage the affairs of the company; the name of the place from which, and the place to which the proposed road is to be constructed, and each county into which or through which it is intended to pass, and its length as near as may be. Each subscriber to such articles of association shall state his place of residence, and the number of shares taken by him in such company.

Articles of association to be filed in the office of Secretary of State.

SEC. 2. Articles of association formed in pursuance of the provisions of the foregoing section shall be filed in the office of the Secretary of State, and thereupon the persons who shall have subscribed the same and all persons who shall from time to time become stockholders in such company, and their successors, shall be a body politic and corporate, in perpetuity, by the name stated in such articles of association, and shall be capable of suing and being sued, and may have a common seal and may make and alter the same at pleasure; and shall be capable in law, of purchasing, holding and conveying any real and personal property whatever, necessary for the construction of such road, and for the erection of all necessary buildings and yards, and appurtenances for the use of the same. A copy of any articles of association filed in pursuance of this act, and certified to be a copy by the Secretary of State or his deputy, shall, in all courts, and places be presumptive evidence of the incorporation of such company, and of the facts stated therein.

Opening of books.

SEC. 3. The directors named in the first section of this act, shall open books for subscription to the capital stock of the company, at such times and in such places as a majority of them may direct, due notices of which shall be given; and in case a greater amount of stock shall be subscribed than the whole capital required by such company, the directors shall distribute such capital stock, so subscribed, as equally as possible among the subscribers; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any one subscriber than by him subscribed for.

Annual meeting of stockholders, and notice thereof.

SEC. 4. There shall be an annual meeting of the stockholders, to be held in one of the counties in which or through which such road is proposed to be or may be constructed, for

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the election of directors, to serve for the ensuing year; notice of which, appointing a time and place, shall be given by the directors chosen as provided in the first section of this act, for the first annual election, and afterwards by their successors in office; which notice shall be published not less than twenty days previous thereto, in a newspaper published in each county through which such road shall be intended to run (if there be stockholders residing therein) in which a newspaper shall be published; and, if no newspaper be published, then by six written or printed notices put up in the most public places in such county. Three judges of elections shall be chosen by the board of directors previous to any annual meeting of the stockholders, who shall be stockholders but not directors at the time of such elections, whose duty it shall be to receive the votes of the stockholders at such elections for directors, and who shall openly count the votes and declare the result, and shall furnish the directors elected at such meeting of the stockholders with a certificate of their election, which certificate shall be evidence of their authority to act as such directors. Not less than seven, nor more than thirteen directors, shall be chosen at such meeting of stockholders, by ballot, and by a majority of the votes of the stockholders being present in person, or by proxy; and every such stockholder, being so present at any election for directors, shall be entitled to give one vote for every share of stock which he may have owned for ten days next preceding such election; but no stockholder shall vote at any such election upon any stock except such as he shall have owned for ten days. No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen. The directors shall hold their office for one year, and until others are elected in their places.

Other meetings may be called.

SEC. 5. Meetings of the stockholders may be called at any time during the interval between the annual meetings, by the directors, or by the stockholders owning not less than one-fourth of the stock, by giving thirty days public notice of the time and place of the meetings, in the manner provided in the next preceding section for the annual meetings; and when any such meeting is called by the stockholders, the particular object of such meeting shall be stated in such notice: and if at any such meeting, thus called, a majority in value of the stockholders are not represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business; and if within said three days, stockholders having a majority of the stock do not attend such meeting, then the meeting shall be dissolved.

Statement of affairs of company.

SEC. 6. At a regular meeting of the stockholders of any such corporation, it shall be the duty of the president and

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directors in office for the preceding year, to exhibit a clear and distinct statement of the affairs of said company, and at any meeting of the stockholders, a majority of those present in person or by proxy, may require similar statements from the directors, whose duty it shall be to furnish them when thus required: and at all general meetings of the stockholders, a majority in value of the stockholders in such company may remove any president or any director of such company, and elect others in their stead: *Provided*, notice of such intended removal shall have been given as required in the two last preceding sections.

Proviso.

Failure to elect directors not to dissolve company.

SEC. 7. In case it shall happen, at any time, that an election of directors shall not be made on the day designated by the by-laws of the company, when it ought to have been made, the company, for that reason, shall not be dissolved, if, within ninety days thereafter, they shall hold an election for directors, in such manner as shall be provided by the by-laws of the company. There shall be a president of the company, who shall be chosen by and from the directors, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices, as the company by its by-laws may require: *Provided*, that nothing herein contained shall be so construed as to prevent the stockholders from removing a president, and electing another in his place in the manner prescribed in the last preceding section.

President, how chosen.

Proviso.

Money subscribed may be called in by directors.

SEC. 8. It shall be lawful for the directors to call in and demand, from the stockholders respectively, any sums of money by them subscribed, in such payments or instalments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within thirty days after personal demand or notice, requiring such payment, shall have been made in each county through which such road shall be laid out, in which a newspaper shall be published: *Provided*, that subscriptions shall not be required to be paid except in equal instalments of not more than ten per cent. a month.

Proviso.

By-laws.

SEC. 9. The directors of such company shall have power to make by-laws for the management and disposition of stock, property and business affairs of such company, not inconsistent with the laws of this State, and prescribing the duties of officers, artificers, and servants, that may be employed, and for the appointment of all the officers for carrying on all the business within the object and purposes of such company.

Stock transferrable.

SEC. 10. The stock of such company shall be deemed personal estate, and shall be transferrable in the manner prescribed by the by-laws of the company; but no shares shall be transferrable until all previous calls thereon shall have been fully paid in, or the shares shall have been forfeited for the non-payment of calls thereon.

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Certificate of capital stock to be filed with Secretary of State.

SEC. 11. The president and a majority of the directors, within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate stating the amount of capital stock so fixed and paid in, which certificate shall be signed by the president and a majority of the directors, and sworn to by the president and secretary: and they shall, within the said thirty days, file and record the same in the office of the Secretary of State.

Profile of route.

SEC. 12. Every such company, before proceeding to construct a part of their road, into or through any county named in their articles of association, shall make a map and profile of the route intended to be adopted by such company; which shall be certified by a majority of the directors, and filed in the office of the clerk of such county, for the inspection and examination of all parties interested therein.

Powers of corporation.

SEC. 13. Every such corporation shall possess the general powers, and be subject to the liabilities and restrictions expressed in the special powers following, that is to say:

First. To cause such examination and surveys for the proposed railroad to be made, as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes, by their officers, agents, and servants, to enter upon the lands or waters of any person; but subject to responsibility for all damages which they shall do thereto.

Second. To receive, hold, and take, such voluntary grants and donations of real estate and other personal property as shall be made to it, to aid in the construction, maintenance, and accommodation of such railroad; but the real estate thus received by voluntary grants, shall be held and used for the purposes of such grants only.

Third. To purchase, and, by voluntary grants and donations, receive and take, and, by its officers, engineers, and surveyors, and agents, enter upon, and take possession of and hold, and use, all such lands and real estate and other property, as may be necessary for the construction and maintenance of its railroad and stations, depots and other accommodations, necessary to accomplish the objects for which the corporation is created; but not until the compensation to be made therefor, as agreed upon by the parties or ascertained as hereinafter prescribed, shall have been paid to the owner or owners thereof, or deposited as hereinafter directed, unless the consent of such owner be given to enter into possession.

Fourth. To lay out its road, not exceeding six rods wide, and to construct the same: and for the purposes of cuttings, embankments, and procuring stone and gravel, may take as much more land, within the limits of its charter, in the manner provided hereinafter, as may be necessary for the proper construction and security of the road.

Fifth. To construct their road upon or across any stream of water, water course, road, highway, railroad or canal, so

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as not to interfere with the free use of the same, which the route of its road shall intersect, in such manner as to afford security for life and property, but the corporation shall restore the stream or water course, road or highway, thus intersected, to its former state, or in a sufficient manner not to have unnecessarily impaired its usefulness or injured its franchises.

Sixth. To cross, intersect, join, and unite its railroad [with any other rail road] before constructed at any point on its route, and upon the grounds of such other railroad company, with the necessary turn-outs, [sidings and switches, and other conveniences,] in furtherance of the objects of its connections; and every company whose rail road is or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or manner of such crossings and connections, the same shall be ascertained and determined by commissioners, to be appointed as is provided hereinafter in respect to the taking of lands; but this section is not to affect the rights or franchises heretofore granted.

Seventh. To purchase lands or take them; may change the line of its road, whenever a majority of the directors shall so determine, as is provided hereinafter; but no such change shall vary the general route of such road.

Eighth. To take, transport, carry and convey persons and property on their railroad by the force and power of steam, of animals, or any mechanical power, or by any combination of them; and receive tolls or compensation therefor.

Ninth. To erect and maintain all necessary and convenient buildings, stations, depots, and fixtures, and machinery for the accommodation and use of their passengers, freight and business, and obtain and hold the lands necessary therefor.

Tenth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor.

SEC. 14. In case any company formed under this act, is unable to agree for the purchase of any real estate, in any county, required for the construction of the track, turn-outs and water stations, it shall have the right to acquire the title to the same in the manner and by the special proceedings prescribed in this act.

Appropriation of lands for use of road, and damages therefor.

SEC. 15. Such company is hereby authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may appropriate so much thereof as may be deemed necessary for its railroad, including necessary side-tracks and water stations, materials for constructing, except timber, a right of way over adjacent lands, sufficient

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to enable such company to construct and repair its road, and a right to conduct water by aquaducts, and the right of making proper drains. The corporation shall forthwith deposit with the clerk of the circuit or other court of record of the county where the land lies, a description of the rights and interests intended to be appropriated, and such land, rights and interests shall belong to such company, to use for the purpose specified, by making or tendering payment as hereinafter provided. The corporation may, by its directors, purchase any such lands, materials, right of way, or interest of the owner of such land; or, in case the same is owned by a person insane or an infant, at a price to be agreed upon by the regularly constituted guardian or parent of said insane person or infant, if the same shall be appraised by the court in which the description aforesaid shall be filed, and on such agreement and approval, the owner, guardian, or parent, as the case may be, shall convey the said premises, so purchased, in fee simple or otherwise, as the parties may agree, to such railroad company; and the deed, when made, shall be deemed valid in law. If the corporation shall not agree with the owner of the land, or with his guardian, if the owner is incapable of contracting touching the damages sustained by such appropriation, such corporation, shall deliver to such owner or guardian, if within the county, a copy of such instrument of appropriation. If the owner or his guardian, in case such owner is incapable of contracting, be unknown or do not reside within the county, such corporation shall publish, in some newspaper of general circulation in the county, for the term of three weeks, an advertisement, reciting the substance of such instrument of apppropriation. Upon fixing such act of appropriation and delivery of such copy, or making such publication, the circuit court or other court of record in the county where the land lies, or any judge thereof in vacation, upon the application of either party, shall appoint by warrant, three disinterested freeholders of such county to appraise the damages which the owner of the land may sustain by such appropriation; such appraisers shall be duly sworn; they shall consider the injury which such owner may sustain by reason of such railroad, and shall forthwith return their assessment of damages to the clerk of such court, setting forth the value of the property taken, or injury done to the property, which they assess to the owner, or owners, separately, to be by him filed and recorded; and thereupon, such corporation shall pay to said clerk the amount thus assessed, or tender the same to the party in whose favor the damages are awarded or assessed; and on making payment of tender thereof, in the manner herein required, it shall be lawful for such corporation to hold the interests in such lands or materials so appropriated, and the privilege of using any materials on said roadway within fifty feet on each side of the centre of such roadway,

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for the uses aforesaid. The cost of such award shall be paid by such company; and on notice by any party interested and showing said proceedings, the court may order payment thereof, and enforce such payment by execution. The award of said arbitrators may be reviewed by the circuit court or other court in which such proceedings may be had, on written exceptions filed by either party in the clerk's office, within ten days after the filing of such award, and the court shall take such order therein as right and justice may require, by ordering a new appraisement, on good cause shown:

Proviso. *Provided*, That notwithstanding such appeal, such company may take possession of the property therein described, as aforesaid, and the subsequent proceedings on the appeal shall only affect the amount of compensation to be allowed; if prior to the assessment, the corporation shall tender to such owner, or his guardian if he be unable to contract, an amount equal to the award afterwards made, exclusive of costs, the costs of arbitration shall be paid equally, by such company and such owner or guardian.

Money, how paid to claimants. SEC. 16. If there are adverse or conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into the said court, by the company, or take security for the same until it can determine who is entitled to the same; and shall direct to whom the same shall be paid; and may, in its discretion, order a reference to ascertain the facts on which such determination and order are to be made.

Attorney for unknown parties. SEC. 17. The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent; the court shall also have power at any time to amend any defect or informality in any of the special proceedings authorized by this act, as may be necessary, or to cause new parties to be added, and to direct such further notice to be given to any party in interest, as it deems proper, and also to appoint other commissioners in the place of any who shall die, or refuse or neglect, or are unable to serve, or who may leave or be absent from the State.

Defective title, possession, &c. SEC. 18. At any time after an attempt to acquire title by appraisal of damages, or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect the same, in the same manner as if no appraisal had been made; and at any stage of such new proceedings, the court may authorize the corporation, if in possession, to continue in possession, and, if not in possession, to take possession of and use such real estate during the pendency and until the final conclusion of such new proceedings, and may stay all actions and proceedings against the company, or any officer, agent, or workman of such company, on account thereof, on such

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company paying into court a sufficient sum, as the court may direct, to pay the compensation therefor, when finally ascertained; and in every such case, the party interested in such real estate may conduct the proceedings to a conclusion, if the company delays or omits to prosecute the same.

May borrow money.

SEC. 19. Such company may, from time to time, borrow such sums of money as they may deem necessary for completing or operating their railroad, and issue and dispose of their bonds for any amounts so borrowed, for such sums, and at such rate of interest as is allowed by the laws of the State where such contract is made; and mortgage their corporate property and franchises to secure the payment of any debt contracted by such company; and the directors of the company may confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time not exceeding fifteen years from the date of said bond, under such regulations as the company may adopt; and such company may sell their bonds either within or without this State, at such rates and prices as permitted by law, and such sales shall be as valid as if such bonds should be sold at par value.

Preferred stock.

SEC. 20. For the purpose of providing means for the payment of its debts, and for the construction of its road, materials or equipments, such company may issue a preferred stock to an amount not exceeding one-half of the amount of its capital with such priority over the remaining stock of such company, in the payment of dividends, as the directors of such company may determine, and shall be approved by a majority of the stockholders.

Line of road may be altered.

SEC. 21. If, at any time after the location of the track of such road, in whole or in part, and the filing of the map thereof, it shall appear to the directors of such company that the line thereof may be improved, such directors may, from time to time, alter the line, and cause a new map to be filed in the office where the map showing the first location is filed, and may thereupon take possession of the lands embraced in such new location that may be required for the construction and maintenance of such road on such new line, either by agreement with the owner, or by such proceedings as are authorized under the preceding sections of this act, and use the same in place of the line for which the new is substituted. But nothing in this act shall be so construed as to confer upon any railroad company already incorporated, any powers to locate its road on any route which would not have been authorized by the charters previously granted; and nothing in this act contained shall authorize the said company to make a location of their track within any city without the consent of the common council of said city; nor

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shall the company have power so to change their road as to avoid any point named in their articles of association.

When track crosses a highway.

SEC. 22. Whenever the track of such railroad shall cross a road or highway, such road or highway may be carried under or over the track, as may be most expedient; and in cases where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road or highway, or such new line, as may be deemed requisite by said directors. Unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be, and duly made by such corporation to the owners and persons interested in such lands; and the same, when so taken and compensation made, to become part of such intersecting road or highway, in such manner and by such terms as the adjacent parts of such highway may be held for highway purposes.

Lands belonging to the State, a county or town.

SEC. 23. If any corporation shall, for its purposes aforesaid, require any land belonging to the State, or to any county or town, the General Assembly, and the county and town officers, respectively, having charge of such lands, may grant such lands to such corporation upon such terms as shall be agreed upon; and if they shall not so agree, the same may be taken by the corporation in the same manner as provided in other cases. No railroad shall be located upon or across the grounds of the State occupied by the institutions of the insane, blind, or deaf and dumb.

Conductors, &c., to wear badge.

SEC. 24. Every conductor, baggage master, engineer, brakeman, or other servant of any such railroad corporation, employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. No collector or conductor without such badge, shall demand, or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office; and no other of said officers or servants without such badge, shall have any authority to meddle or interfere with any passenger or property.

Annual report.

SEC. 25. Every such corporation shall make an annual report to the Secretary of State, of the operations of the year ending on the first day of January: which report shall be verified by the oaths of the treasurer and acting superintendent of operations, and filed in his office by the tenth day of January, in each year, and shall state:

First. The capital stock, and the amount actually paid in.

Second. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and cars, respectively.

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Third. The amount and nature of its indebtedness, and the amounts due the corporation.

Fourth. The amount received for the transportation of passengers, of property, of mails, and from other sources.

Fifth. The amount of freight, specifying the quantity in tons, of the products of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise, and other articles.

Sixth. The amount paid for repairs, engines, cars, buildings, and salaries.

Seventh. The number and amount of dividends, and when paid.

Eighth. The number of engine houses, and shops, of engines and cars, and their character.

Ninth. The number of miles run by passenger, freight, and other trains, respectively.

Lien upon railroad for taxes.

SEC. 26. The State shall have a lien upon all railroads of such corporations, and their appurtenances and stock therein, for all penalties, taxes, and dues, which may accrue to the State from such corporations, which lien of the State shall have precedence of all demands, judgments or decrees, against said corporations; and the citizens of this State shall have a lien upon all personal property of said corporations, to the amount of one hundred dollars for all debts originally contracted within this State, which, after said lien of the State, shall take precedence of all other debts, demands, judgments or decrees, liens or mortgages against such corporations.

To convey U. S. mails.

SEC. 27. Any such corporation shall, when applied to by the postmaster general, convey the mails of the United States on their road; and in case such corporation shall not agree to the rates of transportation thereof, and as to time, rate of speed, manner and condition of carrying the same, the Governor of this State may appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing, of the time and place of meeting, to the corporation, shall determine and fix the prices, times, and conditions aforesaid; but such prices shall not be less for conveying said mails in the regular passenger trains, than the amount which said corporation would receive as freight on a like weight of merchandise transported in their merchandse trains, and a fair compensation for the post office car. And in case the postmaster general shall require the mail to be carried at other hours, and at a higher speed than the passenger trains are run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation therefor.

SEC. 28. If any passenger shall refuse to pay his fare or toll, the conductor of the train, and the servants of the corporation may put him out of the cars at any usual stopping place.

Cars to run regularly.

SEC. 29. Every such corporation shall start and run their cars for the transportation of persons and property at regular

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times, to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer, or be offered, for transportation, at the place of starting, and the junctions of other railroads, and at siding and stopping places, established for receiving and discharging way passengers and freight, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare therefor.

Damages in case of refusal to take passengers, &c.

SEC. 30. In case of the refusal, by such corporations or their agents, so to take and transport any passenger or property, or to deliver the same at the regular appointed place, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

Passenger and freight trains to be separate.

SEC. 31. In forming a passenger train, baggage or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they, or any of them shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of intentionally causing the injury and be punnished accordingly.

No damages for injuries to passenger violating rules.

SEC. 32. In case any passenger on any rail road shall be injured on the platform of a car, or on any baggage, wood or frieght car, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside of its passenger cars, then in the train, such company shall not be liable for the injury: *Provided*, said company at the time furnished room inside its passenger cars, sufficient for the proper accommodation of its passengers.

Map and profile of road.

SEC. 33. Every corporation shall, within a reasonable time after their road shall be located, cause to be made:

First. A map and profile thereof, and of the land taken and obtained for the use thereof, and file the same in the office of the Secretary of State, and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which said parts of said road shall be, there to remain as of record forever.

Second. A certificate specifying the line upon which it is proposed to construct the rail road, and the grades and curves.

When act of incorporation to be void.

SEC. 34. If any such corporation shall not, within three years after its incorporation, begin the construction of its road, and expend thereon five per centum on the amount of its capital, and finish the road and put it in full operation in ten years thereafter, its act of incorporation shall become void.

Companies may increase the amount of their capital stock.

SEC. 35. Railroad companies may increase the amount of their capital stock, by filing in the office of the Secretary of State a certificate, stating the amount of such desired increase and the reasons or necessity for the same, signed by the presi-

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dent and a majority of the directors, and attested by the secretary and seal of such company.

Existing companies may comply with this act.

SEC. 36. All existing railroad companies may acquire all of the powers or benefits conferred by this act, by filing an acceptance thereof in the office of the Secretary of State, properly attested as the corporate act of such company, and the acceptance of any part of this act shall be deemed and taken to be an acceptance of the whole act, and a surrender of the act under which such company may be organized, thereupon such company shall possess such powers, so accepted, and be subject to the obligations and restrictions herein specified, as fully as they would have had and been if organized under this act.

SEC. 37. This act may be amended or repealed at the discretion of the Legislature.

Individual liability.

SEC. 38. The stockholders shall be individually liable for all labor done in the construction of said road that shall remain unpaid after the assets of the corporation shall have been exhausted.

CHAPTER 84.

General Provisions in relation to Railroad Companies.

[APPROVED JUNE 15, 1852.]

Union roads.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be lawful for two or more railroad companies, running railroads to the same town or city, to locate, construct, keep up, repair, and use a common or union railroad of one or more tracks connecting the railroads of such companies for business purposes.

Name, &c., of such road to be recorded; powers of companies.

SEC. 2. Such companies as shall enter into such union arrangements, or may hereafter enter into the same, for the purpose of constructing such union roads, shall by resolution of their respective boards, adopt a name therefor; and shall cause such name, with the length and termini thereof to be recorded in the recorder's office of the county in which such union road may be located, and thereafter such companies may contract and be contracted with, sue and be sued for any matters relating to such union road by such name, and shall have full power by such organization to locate, construct, keep up, change and repair such union road, and to take releases of the right of way, and to condemn so much land as may be necessary for the construction of such union road, and to use and regulate the same.

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Presidents of companies to be board for such road; powers of board.

SEC. 3. The presidents of all the railroad companies entering into such union arrangements as are hereinbefore provided, shall ex-officio form the union boards for the transaction of all matters relating to such union roads. They shall keep a record of their proceedings, which shall at all times be open to the examination of the stockholders and directors of such companies. They shall have power in the name of such union road to pass all by-laws, not inconsistent with the charters or laws organizing their several roads, for the government of such boards, and the regulation of such union roads, and the business thereof.

Condemnation of right of way.

SEC. 4. Whenever it shall become necessary to condemn the right of way for the use of such union roads, the same may be done in the name of such union boards, under the provisions of any of the charters of the companies or laws under which they were organized, forming such union roads:

Proviso.

Provided, that in estimating damages for such right of way, the advantages to such person or persons owning the property sought to be condemned, by the construction of such road or roads, shall not be taken into consideration.

Companies jointly liable.

SEC. 5. Such union companies when so formed, shall be jointly liable to the public, and all persons contracting with the union boards, for all contracts and damages, and as between themselves, shall be liable in the proportion of the interests of each company in the union road or property.

Other companies may enter into union.

SEC. 6. It may be lawful for any other railroad company not originally concerned in the formation or construction of such union roads, to thereafter enter and take such an interest in the same, in such manner and upon such terms as may be agreed upon by the parties; and companies so entering into such union shall have all the rights and privileges conferred thereon, by the provisions of this act.

What laws applicable to union roads.

SEC. 7. All laws in force in this State, or which may be hereafter in force for the protection of railroads, all the property of railroad companies, and the charters of the several companies or laws organizing the same, entering into such union arrangements shall be applicable to such union roads as may be, or shall have been constructed under this act.

Bridging navigable stream.

SEC. 8. All railroad companies, incorporated under any law of this State who are authorized to construct their roads to points beyond any navigable stream, are hereby authorized to cross such streams upon bridges:

Proviso.

Provided, such bridges do not obstruct the free navigation thereof; and *provided further*, that all railroad companies are hereby prohibited from charging or receiving tolls from persons who may cross on any bridge erected by any such company over any stream, over which any toll bridge has been erected, or ferry established within eighty rods of the place at which such railroad bridge has been or may be hereafter erected.

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SEC. 9. It shall be lawful for any railroad company at a regular or called meeting of the stockholders thereof by a majority vote in interest represented at such meeting either in person or by proxy, to determine the number of directors of such company, and reduce the number to not less than seven, or increase the same to not more than thirteen as such meeting shall deem proper; the proceedings of such meeting shall be certified by three or more stockholders present, to the secretary of such company, who shall record the same in the proper books of the company; and thereafter the number of directors shall be the number fixed upon by resolution of such meeting. Company may fix the number of its directors.

SEC. 10. The stockholders of the several companies that shall avail themselves of the benefits of this act shall be individually liable for all debts due for labor done on such union tracks or depots, that shall not be paid for by their respective companies in their corporate capacity when due. Individual liability of stockholders.

SEC. 11. At least thirty days notice shall be given in the manner required by the law under which such company is organized, for the election of directors thereof, of a meeting of the stockholders to take into consideration the propriety of reducing or otherwise changing the number of directors in such company, and to make such reduction or change if it shall be adjudged the interests of the company require it.

CHAPTER 85.

AN ACT to authorize Railroad Companies to increase the amount of their capital stock and to increase the number of their Directors.

[APPROVED JUNE 17, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That whenever any rail road company which may have been incorporated with a fixed amount or limitation of capital, or which may hereafter be organized, shall find it necessary to increase the same for the building, repair, equipment or conducting of their road, it shall be lawful for such company, by a vote of its board of directors, from time to time, to increase their capital stock to any amount by said board of directors deemed necessary, not to exceed the sum of $15,000 a mile exclusively for rail road purposes, inclusive of their original capital, for the purposes aforesaid. How company may increase stock.

SEC. 2. The stockholders of any railroad company heretofore incorporated in this State or that may be hereafter incorporated, may by the vote of a majority in interest of the May determine number of directors.

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stockholders of such company at any annual or other meeting thereof determine that the directors of said company shall consist of any number, not less than five nor more than thirteen, who shall be chosen from any of the stockholders, and thereafter such company may elect from any of their stockholders, the number of directors they have fixed and determined upon as aforesaid, in the same manner and with the same effect as if this section was contained in the original act incorporating such company.

CHAPTER 86.

AN ACT authorizing Railroad, Plank Road, Turnpike Road, and McAdamized Road Companies to borrow money, and to secure the re-payment thereof by mortgage.

[APPROVED FEBRUARY 5, 1852.]

Railroad companies, &c., may borrow money and issue bonds, &c., and may mortgage road or other property.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That each and every railroad, plank road, McAdamized and turnpike road company heretofore incorporated or hereafter to be incorporated within this State, shall have full power and authority from time to time to borrow money upon its own credit at any rate of interest per annum not exceeding the legal rate of interest allowed by the law of the State where the loans may be negotiated or the money borrowed, to be agreed upon between the parties, for the sole purpose of constructing its road, and furnishing materials therefor, with all necessary machinery and fixtures necessary to carry on the operations of such company; and as an evidence of such loans, or for the purchase of materials and necessary machinery on time, may issue its corporate bonds or promissory notes, and to secure the re-payment thereof, with the interest which shall accrue, may mortgage its road, income, and other property, and may, by its president or other officer or agents, sell, dispose of, or negotiate such bonds, notes, or the stock of such company, at such times and at such places either within or without this State, and at such rates, and for such prices as in the opinion of such company will best advance its interests.

Sale of bonds, &c., at discount valid. Bonds, &c., convertible into stock.

SEC. 2. And if such bonds, notes or stock, are thus sold at a discount, such sale shall be as valid and binding, in every respect, as if sold at their par value; and every such company is hereby authorized to confer upon the holder of any bond or note, sold or issued as aforesaid, the right to convert the principal thereof, at any time until paid, into the stock of such company.

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SEC. 3. All such contracts, bonds, notes and mortgages, made in pursuance of the foregoing provisions, shall be as valid and binding upon the parties thereto, as if the same had been originally embodied in the several acts incorporating such companies: *Provided, however*, that this act shall not be so construed as to repeal, change or modify any similar provisions contained in any act incorporating any railroad company, or any act amendatory thereof, or to restrict the provisions of any act of incorporation of any railroad company, or any act amendatory thereof, which has enlarged rights, grants or privileges.

Contracts, &c., under this act, binding as if made under act of incorporation.

Proviso.

SEC. 4. It is hereby declared that an emergency exists for the immediate taking effect of this act; therefore, be it enacted, that this act shall take effect and be in force from and after its passage; and that the same be published in the Indiana Statesman, the Indiana State Journal, and the Indiana State Sentinel.

This act, when to be in force.

CHAPTER 87.

AN ACT supplemental to an act entitled an act to provide for the incorporations of Railroad Companies.

[APPROVED JUNE 18, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That nothing in said act shall be construed to grant the power to any railroad company that may be organized under the provisions of this act, to cross or intersect any railroad now in course of construction, within forty miles of its terminus, where such terminus is within the corporate limits of a city in this State, situate on a navigable stream, within two miles of the boundary lines of two adjoining States, except within the corporate limits of such city.

Act, how construed as to railroad crossings.

SEC. 2. The provisions of this act shall not be so construed as to affect in any manner, whatever, the construction of any railroad by any company at any time heretofore incorporated under any act of incorporation passed by the General Assembly of the State of Indiana, upon the route designated in the act of incorporation, or in anywise to impair the rights of such company, or to prevent or hinder the construction of any railroad having both of the terminations thereof within the limits of this State, and not forming a regular connection with a railroad leading directly to some city situate upon the Ohio river beyond the limits of the State.

Same.

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CHAPTER 88.

AN ACT to prevent the destruction of, or injury of animals, and the destruction of human life by Railroads, and to provide compensation for the same.

[APPROVED MAY 11, 1852.]

Value of animals killed on railroad to be recovered without proof of negligence.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That whenever any animal or animals shall be killed or injured by the cars or locomotives, or other carriages used on any railroad in this State, the owner of such animal or animals may recover the value thereof in an action against said company, without proof of negligence or willful misconduct on the part of officers or servants of such company.

Otherwise, if road be fenced.

SEC. 2. The preceding section shall not apply to any accident occurring on any portion of said road as may be securely fenced in, and such fence properly maintained by such company.

Damages to be recovered in case of death of any person from negligence, &c.

SEC. 3. Whenever any person shall die from any injury resulting from the negligence or unskillfulness of any of the officers or servants of any railroad company in this State, or to the insufficiency of, or defect in, such road or bridges thereof, or the cars or locomotives thereon, such company shall be liable in damages to the wife, or if there be no wife, or she shall fail for three months after such death to prosecute, then to the minor child or children of such deceased; or if such deceased be a female, then to the husband, or if there be no husband, or he shall fail for three months to prosecute, then to the minor child or children of such deceased; or if such deceased be a minor, and unmarried, then to the father, or if there be no father, to the mother of such deceased.

Emergency.

SEC. 4. There being no laws now in existence authorizing actions in the preceding cases, it is declared that an emergency exists requiring the immediate taking effect of this law; and the same is declared to be in effect from and after its passage.

CHAPTER 89.

AN ACT to empower Railroad Companies to receive lands, lots, and other property in subscription of stock.

[APPROVED JANUARY 20, 1852.]

Companies may hold real estate by purchase or as stock.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be lawful for any railroad company which may now be, or may hereafter be incorporated to

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receive by purchase or by subscription of stock, any lands, and to hold and convey the same that may be necessary for the purpose of erecting depots, turn-outs, work-shops, warehouses, or for any other purposes necessary for the conveniences of said companies, in order to transact the business usual for railroad companies.

May receive lands and lots as subscription.

SEC. 2. It may be lawful for said corporations by the consent of the directors of the same, to receive the subscription for the capital stock of said companies, under such regulations and restrictions as their boards of directors may prescribe, any lands, town lots, real estate, or other description of property as may be offered for that purpose: *Provided, however*, that the same shall be sold, except so much as may be necessary for the use of said road, or for the purposes aforesaid, within a reasonable time, and the proceeds applied for the construction of said roads or their appurtenances.

Proviso.

This act, when to be in force.

SEC. 3. There being in the opinion of this General Assembly an emergency for the immediate taking effect of this act, the same shall be in force from and after its passage, and publication in the Indiana State Journal, Indiana State Sentinel, and Indiana Statesman.

CHAPTER 90.

AN ACT authorizing Recorders to make out complete or General Indexes to Records of Deeds and Mortgages, and to procure and use Seals.

[APPROVED FEBRUARY 16, 1852.]

General index to record of deeds.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That each recorder in this State is hereby authorized and required, within a reasonable time after the passage of this act, to make out, where the same has not previously been done, a complete or general index to all the records of deeds for real estate, in his office. Such index shall be a double index, giving the name of each grantor alphabetically, and also of each grantee in the same order; together with the number or letter of the book and the page in which each deed is recorded.

General index to record of mortgages.

SEC. 2. Each recorder is further authorized and required, as aforesaid, to make out a complete or general index to all the records of mortgages, upon real estate, in his office, in manner and form as prescribed in the foregoing section for deeds, excepting that the headings therein prescribed shall be so changed as to suit mortgages.

To continue indexes.

SEC. 3. After the completion of the indexes contemplated by the preceding sections of this act, each recorder shall,

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from time to time, upon filing a record of deeds or mortgages, include the same in the complete or general indexes, as aforesaid.

Compensation.

SEC. 4. The board doing county business shall allow the recorder, out of the county treasury, such compensation for making such complete or general indexes as shall be deemed reasonable and just; and it shall be the duty of such recorder to keep up and continue such index, in the manner aforesaid, as deeds and mortgages shall, from time to time, be recorded.

To use seal.

SEC. 5. The several recorders in this State are hereby required to furnish themselves, at the expense of their respective counties, with seals, to be by them officially used in attesting certificates and other instruments necessary and proper to be sealed; and full faith and credit shall be given to such seals within this State without further attestation; but before any such seal shall be used as aforesaid, an accurate description of the impression thereof, attested by the proper recorder, and the impression of such seal, shall be filed in the office of the clerk of the circuit court, and by said clerk recorded in the order book of said court.

CHAPTER 91.

AN ACT to provide for the election, and prescribing certain duties of Recorder.

[APPROVED MAY 31, 1852.]

Election and bond.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That at the general election immediately preceding the expiration of the terms of office of the present incumbents, and every four years thereafter, there shall be elected in each county a recorder, who shall give bond in the penal sum of two thousand dollars.*

Shall procure and keep necessary books.

SEC. 2. Such recorder, at the expense of the county, shall procure sufficiently large and well bound books, of good materials, in which he shall record all deeds, bonds, field notes and other instruments of writing delivered to him, which by law he is bound to record, and he shall also keep a book in which he shall make an entry, upon the reception of any such instrument, the date thereof, names of grantors

* The board of county commissioners cannot create a vacancy in the office of recorder.—*Hedley* vs. *The Board of Commissioners*, 4 Blackf. 116.

The offices of county recorder and county commissioner are lucrative offices within the meaning of the constitution. A county recorder by accepting the office of county commissioner, vacates the office of recorder.—*Dailey* vs. *The State*, 8 Blackf. 329.

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and grantees, description of the premises affected by such instrument, and the fees for the recording thereof, and shall deliver a receipt to the person bringing such instrument, if demanded, containing the matter embraced in such entry.

Recording and indexing instruments.

SEC. 3. Such recorder shall record all instruments of writing proper to be recorded, in the order of priority of time at which each was delivered at his office for record, and shall also make a complete index of all such instruments so recorded, for each volume thereof, in the manner following:

The name of each grantor, promiser or covenanter, in alphabetical order referring to the proper grantee, promisee or covenantee; and also the name of each grantee, promisee or covenantee, in the same order, referring to the proper grantor, promiser or covenanter.

Record of marks and brands.

SEC. 4. It shall be the duty of the recorder of each county to record, in a book provided by him for that purpose, the ear-marks of cattle, sheep and hogs, and marks and brands of horses, mules and asses, as any person may wish to have recorded in said book; but he shall not record the same marks or brands to two different persons of the same township, and the marks and brands of each township shall be recorded separately in said book; and shall deliver to the owner a certificate thereof.

Record of deeds, &c.

SEC. 5. Such recorder shall record deeds, mortgages, and indentures of apprentices, in separate books to be procured for that purpose, as provided in section 2, of this act.

Office, where kept.

SEC. 6. The office of such recorder shall be kept at the county seat in a room to be provided for that purpose by the board of commissioners of the county.

Instrument concerning title to lands recorded in another county, may be recorded.

SEC. 7. Whenever any instrnment of writing concerning the title to lands, or any town plats or a part thereof, have heretofore been duly recorded in any other county of this State, the board of commissioners of the county where such lands, or towns are situate may require the recorder of the same county to record in a suitable book, to be provided therefor, a copy of such instrument of writing certified to be a true copy by the recorder of the county, where the same has been recorded; and a copy of such copy duly certified to be true by such recorder of the county, where the lands or towns are situate, shall be admissable and have the same force in evidence as the original instrument of writing would have.

Recorder shall require indorsement of auditor on deeds.

SEC. 8. Before recording any deeds of partition or conveyance of any land, the recorder shall require the endorsement thereon of the auditor of the proper county which such auditor is hereby required on demand to make, that the land therein mentioned has been "duly entered for taxation," or that it is "not taxable."

Penalty for recording without it.

SEC. 9. If any recorder shall record any deed without such indorsement thereon, he shall forfeit and pay the sum of five dollars, to be recovered by action in the name of the county, for the benefit of the common school fund, before any court of competent jurisdiction.

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CHAPTER 92.

AN ACT repealing all former acts of the Legislature except those therein named.

[APPROVED JUNE 18, 1852.]

What acts not repealed.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That all laws not enacted at the present session of the General Assembly, are repealed, except,

Incorporations. *First.* Acts of incorporation, and acts amending the same.

Streets, roads and streams. *Second.* Special acts vacating streets and alleys, or establishing, vacating towns or changing particular roads; or declaring streams navigable, or highways.

Relief. *Third.* Special acts for the relief of individuals therein named.

Legalizing acts. *Fourth.* Special acts legalizing the acts of any officer, trustee, agent, or court.

Country seats. *Fifth.* Acts establishing or changing county seats.

Names. *Sixth.* Acts changing the names of towns or individuals.

Divorces and marriages. *Seventh.* Acts granting divorces or legalizing marriages.

Records and papers. *Eighth.* Special acts providing a remedy for the destruction of records and papers.

Apportionment. *Ninth.* An act entitled "an act to apportion senators and representatives for the next five years," approved February 13th, 1851.

Wabash and Erie canal. *Tenth.* An act entitled "an act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie canal to Evansville," approved January 19th, 1846; and an act supplementary thereto, approved January 27th, 1847.

Minors. *Eleventh.* Act authorizing minors to convey real estate.

Wabash and Erie canal. *Twelfth.* All laws now in force relating to or in any way affecting the Wabash and Erie canal, or the construction thereof, or granting any privileges, rights or immunities, to any persons relating to said canal, or relating to canal lands or canal loans or funds, or to the purchasers of canal lands, or to settlers thereon, or to the assessment of damages for lands or materials taken for the construction thereof, or the enforcement of police regulations thereon, and all the provisions affecting the trust vested in the board of trustees of said canal at the time the same passed into their hands.

Michigan road. *Thirteenth.* All laws relating to the Michigan road or Michigan road lands.

Treasury notes. *Fourteenth.* All laws relating to the issue and redemption of treasury notes.

State printer. *Fifteenth.* All laws now in force regulating the election and duties of State Printer.

Canals, railroads, &c. *Sixteenth.* All laws now in force relating to the construction or preservation of any and all canals, railroads, McAd-

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amized roads or turnpike roads, or to the assessment and payment of damages for lands or materials taken for the construction thereof.

Seventeenth. All acts relative to the sinking fund. Sinking fund.

Eighteenth. All laws regulating the duties of the Agent of State for the town of Indianapolis, and in relation to the sale of lots therein. Town of Indianapolis.

Nineteenth. All laws regulating the sinking fund. Sinking fund.

Twentieth. All laws general or special now in force regulating the sale of spirituous and intoxicating liquors, and prescribing the punishments for violations of said laws.* Sale of liquors.

SEC. 2. No rights vested, or suits instituted under existing laws shall be affected by the repeal thereof, but all such rights may be asserted, and such suits prosecuted, as if such laws had not been repealed. Vested rights.

SEC. 3. All crimes and misdemeanors committed under existing laws, shall be punished in the same manner, and to the same extent, as if such laws had not been repealed. Crimes and misdemeanors.

SEC. 4. The law providing for the assignment of dower, shall continue in force, so far as rights of dower vested under existing laws are concerned. Dower.

*See title "Statutes," foot note.—*Tay'or* vs. *State*, 7 Blackf. 93.
See, also, same title, *McQuilken* vs. *Doe d. Stoddard*, 8 Blackf. 581.

CHAPTER 93.

AN ACT to provide for the election of a Reporter, and a speedy publication of the decisions of the Supreme Court, and for the compensation of such Reporter.

[APPROVED FEBRUARY 5, 1852.]

WHEREAS, by the sixth section of article seventh of the amended constitution, the General Assembly is required to provide by law for the speedy publication of the decisions of the supreme court made under the said constitution;

AND WHEREAS, the interests of the State and the spirit of said section require that immediate steps be taken to secure a speedy publication of such decisions, by reason whereof an emergency exists that the law providing therefor should be in full force from and after its passage; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That at the general election, the electors of this State shall elect a reporter to report the decisions of the supreme court, who shall hold his office for the term of four years from the time of his election, if he shall so long behave well. And the present General Assembly shall elect said Election—tenure of office.

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reporter, who shall hold his office until the next general election, and until his successor shall be elected and qualified.

Duty of reporter

SEC. 2. It shall be the duty of said reporter to cause to be printed and published all the decisions of the supreme court, which have been rendered since the close of the November term, 1847, and now remain unpublished, within two years from the date of his election; and all the decisions of said court, which may hereafter be made during his continuance in office, within six months from the end of the term at which they shall have been made.

Size and contents of reports.

SEC. 3. The reports of said decisions shall be printed on good paper, and upon pages of as large size as those of the previous volumes of reports of the decisions of the supreme court of this State, and shall consist of the opinions of the judges given in each case: such opinions to be published in full, and in manner and form as the said opinions were delivered by the judges; a brief statement of the facts, when the facts are not sufficiently stated in said opinions, and an analysis or syllabus of the points decided, together with such notes and references as the reporter may deem proper, after the manner of the first and second volumes of Blackford's Reports, and shall attach as an appendix to each volume, immediately before the index thereof, a table of all cases decided in said court, the decisions in which, may have been overruled by decisions contained in such volume.

Copies to be sent to judges and clerks.

SEC. 4. As soon as the decisions made at any term of the supreme court shall be printed, the reporter shall cause the sheets of a sufficient number of copies to be stitched together, and shall deliver them to the Secretary of State, who shall immediately furnish one copy thereof to each judge of the supreme and circuit courts, and cause to be deposited one copy in the office of the clerk of the circuit court of each county in the State.

Binding and distribution.

SEC. 5. Whenever such printed report shall, without dividing the decisions made at any one term, make not less than six hundred pages, the reporter shall add an index thereto, and cause the same to be bound in good law binding into a volume, to be styled "Indiana Reports," and shall forthwith deliver to the Secretary of State, for the use of the State, five hundred volumes thereof; and the Secretary of State shall cause the same to be distributed and disposed of as follows, to-wit: Three copies to the clerk's office of the circuit court of each county within this State, two copies of which shall be for the use of the courts of such county, and the other copy for the use of the county library thereof, and one copy to each college in this State, and the residue of such volumes he shall cause to be deposited in the State library.

Account of reporter, how paid.

SEC. 6. The account of the reporter shall be audited and paid out of any money in the treasury not otherwise appropriated, at the rate of three dollars for each bound volume, and for each stitched copy as provided for in the fourth sec-

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tion of this act, at the same rate per printed page, estimating a bound volume at six hundred pages.

Reporter may use records.

SEC. 7. The reporter shall be entitled to the use of the manuscript opinions written by the judges, and of the records, briefs, and other papers filed in the office of the clerk of the supreme court, for the purpose of making out his reports; and he shall also be entitled to the exclusive copy-right of each volume of reports published by him; and he shall receive no other compensation from the State for his services: *Provided, however*, that nothing in this act shall be so construed as to prevent any public newspaper of this State from publishing brief abstracts of the decisions of the supreme court, or the legislature, or judges of said court, from directing the publication of any particular decision thereof, if deemed of public importance. Said reporter shall receive for each and every volume of the size and description hereinbefore provided, (except those for the use of the State,) such price as may be agreed upon by purchasers, not exceeding three dollars; and it shall not be lawful for him, directly or indirectly, to receive, or any other person, any greater price than this per volume.

Proviso.

Price of reports.

Act in force from its passage.

SEC. 8. This act shall be in force from and after its passage.

CHAPTER 94.

AN ACT relative to the Salaries of Public Officers, and providing the manner of paying the same.

[APPROVED JUNE 18, 1852.]

Salary.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, There shall be allowed to the several officers of government and persons hereinafter mentioned the following annual salaries, to be paid quarterly out of any moneys in the treasury belonging to the general fund, and not otherwise specially appropriated by law, that is to say,

Of Governor.

First. To the Governor, fifteen hundred dollars.

Of Secretary of State.

Second. To the Secretary of State, eight hundred dollars.

Of Auditor of State.

Third. To the Auditor of State, Treasurer of State, and Judges of the circuit court, each one thousand dollars.

Of judges of supreme court.

Fourth. To the Judges of the Supreme court, each twelve hundred dollars.

Of Governor's private sec'y.

Fifth. To the governor's private Secretary three hundred and fifty dollars.

Of sup't of public instruction.

Sixth. To the superintendent of public instruction, thirteen hundred dollars.

Of prosecuting attorney.

Seventh. To the prosecuting attorneys of the several judicial circuits, three hundred dollars each, and docket fees allowed by law in the circuit court.

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Of State librarian.

Eighth. To the State Librarian, five hundred dollars.

Of sup't of insane and deaf and dumb asylums.

Ninth. To the Superintendent of the Insane, twelve hundred dollars, and the Superintendent of the Deaf and Dumb Asylum, one thousand dollars.

Of sup't of asylum for the blind.

Tenth. To the Superintendent of the Asylum for the Blind, eight hundred dollars.

Of warden of State prison.

Eleventh. To the Warden of the State Prison, six hundred dollars.

Of physician of State prison.

Twelfth. To the Physician of the State's Prison, the sum of four hundred dollars.

Of chaplain of State prison.

Thirteenth. To the Chaplain of the State's Prison, the sum of one hundred and fifty dollars.

Of adjutant and quartermaster general.

Fourteenth. To the Adjutant and Quarter-Master General, each the sum of one hundred dollars.

Salaries, how paid.

SEC. 2. The salaries allowed in section first, except the physician to the State Prison, shall be paid upon warrants drawn by the Auditor of State on the first day of January, April, July, and October in every year.

CHAPTER 95.

AN ACT concerning Saline Lands.

[APPROVED MAY 20, 1852.]

County auditor to have the care of saline lands.

SECTION 1. *Be it enacted by the General Assemby of the State of Indiana,* That the auditors of counties wherein saline lands lie, shall severally have the care and supervision of such lands remaining unsold, or which being sold may become forfeited to the State.

Books, &c., to be handed over to auditors.

SEC. 2. The books, maps, notes, leases and other papers relating to said lands, in the hands of the commissioners, shall be by them transferred to the auditors in their respective counties.

May be sold under same regulations governing sale of seminary land.

SEC. 3. Such auditors may sell such lands on the terms and conditions provided for the sale of lands belonging to the seminary fund; and shall be governed in all matters relating thereto by the laws regulating the sale of seminary lands.

Treasurers to receive money.

SEC. 4. Treasurers shall receive all money due for said lands in their respective counties, whether for principal, interest, rent or otherwise.

Payments before forfeiture to be credited.

SEC. 5. If on any forfeited saline lands exposed for re-sale, the widow of the first purchaser or his heirs, shall become purchasers, they shall have credit for such sums, without interest, as may have been paid before forfeiture, on such lands; deducting, however, reasonable expenses of said re-sale from such credit.

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CHAPTER 96.

AN ACT prescribing the duties of Secretary of State.

[APPROVED MAY 20, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Secretary of State, before entering upon the duties of his office, shall execute his official bond for the sum of ten thousand dollars, to be approved by the Governor. Bond.

SEC. 2. He shall keep and preserve, Documents to be preserved by Secretary.

First. The enrolled copy of the constitution of the State.

Second. The description of the State seal.

Third. The manuscripts containing the enrolled acts, and joint resolutions of the General Assembly, and all the books, records, parchments, maps, registers, and papers deposited in his office.

Fourth. All deeds and conveyances, except mortgages, belonging to the State.

Fifth. All official bonds of officers approved by the Governor, except the bond of such Secretary.

Sixth. All written contracts to which the State is a party, unless required to be deposited elsewhere.

SEC. 3. All copies of any records, deeds, laws, acts, official bonds, registers, and papers, or such parts thereof as shall be necessary, deposited by authority of law, to be kept in his office, duly certified and sealed by the Secretary, with the State seal, shall, in all cases, be evidence equally and in like manner as the original. Copies to have same force in evidence as original.

First. He shall keep a fair register of, and attest all the official acts and proceedings of the Governor, and affix the seal of State with such attestations to all commissions, pardons, and other public instruments to which the signature of the Governor is required. He shall register and attest official acts of Governor.

Second. Lay all papers, minutes, and vouchers, relative to the official acts and proceedings of the Governor, before either house of the General Assembly, when required by such house. Shall lay all papers relative thereto before legislature when required.

Third. Permit all the books, bonds, deeds, conveyances, registers, papers, accounts and transactions of his office, to be open at all times to the inspection and examination of any committee of either branch of the General Assembly. Shall keep all books, &c., open to inspection by legislature.

Fourth. Furnish information in writing upon any subject relating to the duties of his office, to the Governor, whenever required. Furnish information to Gov.

SEC. 4. He shall furnish on demand, to any person, a duly certified copy of all or any part of any law, act, record, public register, public document, or other instrument of writing on file, or deposited pursuant to law, to be kept in his office, and of which a copy may be properly given. Shall furnish copies of any document on file, &c.

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Shall deliver to State printer copies of acts, &c.

SEC. 5. *First.*—He shall deliver to the State Printer, at the earliest day practicable, copies of all acts, joint resolutions, and memorials, as they are passed by the General Assembly, with proper marginal notes to the general laws.

Shall furnish indexes, &c.

Second. Prepare and deliver to said printer, a properly digested index of said laws, joint resolutions and memorials, and also of the documentary journals of the respective houses.

Superintend printing, binding, and distribution of laws, &c.

Third. Superintend the printing and binding of said laws and resolutions, and deliver the proper number to the respective counties, as required by law.

Shall deposit copy of laws in his office.

SEC. 6. He shall deposite in his office a certified printed copy of the laws passed at each session of the General Assembly.

Laws of congress, how distributed.

SEC. 7. He shall distribute the laws of Congress received by the State, as follows, to-wit:

First. Six copies shall be bound and placed in the State library.

Second. A copy shall be delivered to each judge of the supreme court, for his use, and the use of his successors in office.

Third. Two copies shall be sent with the laws of this State to the clerk's office of each county, one to be kept by such clerk for the use of the courts of his county, and the other to be placed in the county library.

Statutes of each session, how distributed.

SEC. 8. In addition to the statutes required by law to be distributed, he shall transmit, under the direction of the Governor, the statutes of each session, as follows, to-wit:

First. To each of the several States in the Union, two copies.

Second. To each of the several departments of the general government, and also to the general land office, and the congressional library, two copies each.

Third. To each university and college in the State of Indiana, one copy.

Fourth. To each State, department, office, university and college, specified in this section, one copy of the reported decisions of the supreme court of Indiana.

Shall record date of reception of laws at the several clerk's offices.

SEC. 9. He shall record in his office the date when the laws are received at the respective clerk's offices in the several counties, as the same shall appear from the receipts given by said clerks, of the reception of said laws; and his certificate, under the seal of the State, shall be evidence of the date at which such laws were thus received in any of such counties.

May appoint deputy, &c.

SEC. 10. The Secretary may appoint a deputy, who may perform the duties of the office of Secretary, and he, or his deputy, shall attend at the office of such Secretary, during business hours every day in the year, Sundays and the fourth of July excepted.

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CHAPTER 97.

AN ACT to provide for the sale of County Seminaries, and the property belonging thereto, and to transfer the proceeds thereof to the Common School Fund, after deducting advances made by individuals, and to repay such advances.

[APPROVED JUNE 12, 1852.]

Auditor and treasurer shall sell seminaries.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the county treasurer and county auditor, or the clerk of the circuit court doing the business of the county auditor, (as the case may be,) in each of the several counties of this State, are hereby empowered and required to offer at public sale, the county seminary buildings and other property, both real and personal, belonging to such seminaries in their respective counties.

Notice of sale.

SEC. 2. The said county treasurer and the said county auditor, or the clerk of the circuit court doing the business of such county auditor, shall give ninety days' notice of such sale, and the terms and conditions thereof, by posting up three printed notices in each of the civil townships of the county, and by publishing the same in a newspaper published in said county, if any there be; otherwise, in the newspaper having the greatest circulation in such county, if there be any convenient.

Sale.

SEC. 3. Such sales shall be at the court house door, within business hours, and may be adjourned from day to day, if in the opinion of the said officers, it shall be expedient so to adjourn it.

Payment.

SEC. 4. Upon all real estate sold by virtue of this act, the purchaser shall pay the interest upon the whole amount of the purchase money for one year in advance, at the time of receiving a certificate of purchase as hereinafter provided, and the principal in ten equal annual instalments with interest annually in advance upon the residue of the said principal.

Failure to pay, forfeits contract.

SEC. 5. If any purchaser shall fail to pay any such annual instalment, either of principal or interest, when the same shall be due and payable, the said contract shall be forfeited, and the treasurer and auditor, or the clerk doing the business of such auditor as aforesaid, shall forthwith proceed to sell such real estate in the same manner and upon the same terms above specified.

Surplus proceeds of second sale to go to first purchaser.

SEC. 6. If, on such second sale, said real estate shall produce more than sufficient to pay the sum owing therefor with interest and costs, and five per cent. damages, the residue shall, when collected, be paid over to the first purchaser or his legal representative.

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Payment may be made any time before sale.

SEC. 7. At any time before sale the payment of the sum due with interest for the delay, and all costs, together with five per cent. damages on the whole sum due shall prevent the sale and revive the original contract.

Certificate of purchase.

SEC. 8. A certified statement of such sale shall be made and signed by the said treasurer and county auditor, or clerk doing the business of such auditor, and being first recorded in the records of the board of county commissioners, shall be delivered to the purchaser when he makes his first payment, and shall entitle him to a deed when the terms of such purchase shall be fully complied with.

Deed.

SEC. 9. Upon full payment being made for the said real estate, a deed shall be executed therefor by the county auditor, which, before delivery, shall be attested by the treasurer and recorded in the record book of the board of county commissioners, and the said deed, when thus executed and delivered, shall vest in the grantee, his heirs and assigns forever, all the right, title and interest which the board of trustees of the county seminary of such county or any other person for the use of such county seminary, have or has in the said real estate so conveyed.

Certificate assignable.

SEC. 10. Certificates of purchase may be assigned, but no such assignment shall be valid unless acknowledged before the county auditor, who shall make a record of the same.

Penalty of buyer for failing to make first payment.

SEC. 11. Any person buying at any such sale, and failing to make the first payment above required, shall pay ten per cent. upon the sum bid, to be recovered by action before any court having jurisdiction, to be prosecuted for by the county auditor or clerk of the circuit court doing the business of such auditor, in the name of the State, for the use of the common school fund, and the said treasurer and auditor, or clerk, as the case may be, shall be competent witnesses.

Sale of personal property.

SEC. 12. Sales of personal property belonging to such seminaries shall be upon a credit of twelve months, the purchaser giving his note, with approved freehold security, for the amount of the purchase money, with interest thereon, and without any relief whatever from valuation or appraisement laws.

Money advanced by individuals for certain purposes, how paid.

SEC. 13. Such sums as have been advanced by any individual, or for which he may be liable, for the building, repairing or furnishing of any of such county seminaries, or for the purchase of land upon which they have been built, relying upon the fund of such seminaries for reimbursement, shall be repaid to such individual as has advanced or become liable for the same, in proportion to the amount paid by each *pro rata* with the amount expended for the same objects out of the seminary funds, or to his legal representatives out of the proceeds of such sale, proof thereof being made to the satisfaction of the board of county commissioners, who shall direct the county auditor to draw his warrant upon the treasurer for the amount of such advance or advances, if

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demanded within two years; but if not so demanded, it shall constitute a portion of the common school fund.

Where real estate has been donated.

SEC. 14. Where any such real estate has been donated for the use and benefit of any county seminary, the county commissioners, before such real estate is offered for sale, as herein provided, shall extinguish the donor's title by purchase, if they shall deem it expedient, or they may direct the sale to be made with condition that the purchaser shall extinguish such title, as a part of the consideration of the purchase.

Disposal of proceeds of sale.

SEC. 15. The proceeds of the said sales, after deducting the necessary expenses thereof and the amount due to individuals for advances as aforesaid, shall be placed by the county treasurer to the credit of the common school fund, to be disposed of in such manner as shall be directed by law.

CHAPTER 98.

An Act to provide for a general and uniform system of Common Schools, and School Libraries, and matters properly connected therewith.

[APPROVED JUNE 14, 1852.]

Tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall be annually assessed and collected, as the State and county revenues are assessed and collected, *first*, on the list of property taxable for State purposes, the sum of ten cents on each one hundred dollars.

What to constitute common school fund.

SEC. 2. The funds heretofore known and designated as the congressional township fund, the surplus revenue fund, the county common school fund, and all funds heretofore appropriated to common schools, the saline fund, the bank tax fund, shall, together with the fund which shall be derived from the sale of the county seminaries, and the property belonging thereto, from the fines assessed for breaches of the penal laws of the State, and from all forfeitures which may accrue, all lands and other estates which shall escheat to the State for want of heirs or kindred entitled to the inheritance, all lands which have been or may hereafter be granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof, including the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress of 28th September, 1850, and deducting the expenses of selecting and draining the same, the taxes which may from time to time be assessed upon the property of corporations for common school purposes, the fund arising from the one hundred and fourteenth section

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of the charter of the State Bank of Indiana, and unreclaimed fees as provided by law, shall be denominated the common school fund, the income of which, together with the taxes mentioned and specified in the first section of this act, shall be applied to the support of common schools.

Counties liable for fund.

SEC. 3. The several counties of this State shall be held liable for the preservation of said fund, and the payment of the annual interest thereon, at the rate established by law.

Civil townships to be school townships.

SEC. 4. Each civil township in the several counties of this State, is hereby declared a township for school purposes, and the trustees of such townships are hereby declared to be trustees also for school purposes, and their clerk and treasurer shall be the clerk and treasurer for school purposes also.

Duties of clerk.

SEC. 5. Such clerk shall keep a record of the proceedings of such board of trustees, and discharge such duties as may from time to time be required of him.

Bond of treasurer.

SEC. 6. The treasurer shall give an official bond for the use of the township, in such sum and with such surety as may be approved by such board.

Duties of treasurer.

SEC. 7. Such treasurer shall collect all rents and debts belonging to his township, receive from the county treasurer all sums apportioned to his township for educational purposes, or which may be raised by any tax voted by the inhabitants of his township for any purpose authorized by this act, and pay out the same according to the orders of such board. He shall keep accurate accounts of his receipts and expenditures, and settle with the board of trustees once in each year, and oftener if required, and discharge all other duties required of him.

Duties of board.

SEC. 8. Such board shall take charge of the educational affairs of the township, employ teachers, and visit schools, either as a board or by one of their number, at least twice during each term thereof.

Provide map of township, and locate schools.

SEC. 9. They shall cause to be prepared a map of their township, on which shall be marked annually, the residence of the scholars in such township, within the ages prescribed by law. They shall also establish and conveniently locate in said township a sufficient number of schools for the education of the children therein.

To have charge of school houses, exhibit annually receipts and expenditures.

SEC. 10. They shall have charge of all school houses, make contracts for the building and repair thereof, and provide suitable furniture and fuel. They shall, at the annual township meeting, exhibit a complete account of receipts and expenditures during the year preceding such annual meeting, and an estimate by items of the probable amount required for building and repairing school houses, furniture, fuel and apparatus, for the action of the township, and at such meeting the trustees shall exhibit an account of the number of days each has been employed during the year in the discharge of his duty as such trustee, who shall be en-

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titled to receive one dollar per day for the time actually spent in the school affairs of their township.

To select site for school houses.

SEC. 11. They shall present for the decision of such meeting, the erection or removal to a more eligible site, of any school house, with plans and probable expenses of any new one, or of removal: *Provided however*, That in case no provision is made by such meeting for building, removing, repairs, furniture, or fuel, such trustees may provide therefor out of any funds in their hands.

Enumeration.

SEC. 12. They shall, on or before the 20th day of September, in each year, make an enumeration of the children within their respective townships, between the ages of seven and seventeen years, distinguishing between seven and twelve, and twelve and seventeen; and shall ascertain, by inquiry, to which school parents and guardians desire to send, and shall enroll accordingly for one year, and furnish to each teacher a list of children assigned to him.

May transfer scholars from one township to another.

SEC. 13. When persons can be better accommodated at the school of an adjoining township, the trustees of the township in which such persons reside, shall transfer them for educational purposes to such adjoining township, and notify the trustees of the same of such transfer; and in any enumeration the children of such persons shall be regarded as belonging to the township to which they have been transferred; and such persons shall, for educational purposes, be voters in such adjoining township only.

Reports of teachers.

SEC. 14. They shall require each common school teacher to file with the clerk of such board, at the expiration of each school term, a complete report, verified by affidavit, of the number of scholars admitted during such term, distinguishing between male and female, and between the ages of five and twelve, and twelve and twenty-one years, the average attendance, books used, branches taught, and number of pupils engaged in the study of each branch; and until such report shall have been so filed, such trustees shall make no payment to such teacher for services.

Shall present a statement of the number of scholars, teachers, amount of funds, &c.

SEC. 15. They shall present, at the annual township meeting, a statement exhibiting the number of children in the township between the ages of seven and seventeen years, distinguishing between male and female, and between the ages of seven and twelve, and twelve and seventeen years, the number of schools, the number of teachers, male and female, and the number of children, male and female, who have attended school during the past year, distinguishing between those above and those below the age of twelve, the average attendance, length of school terms, compensation of teachers, male and female, amount of public funds apportioned to the township, additional amount raised by vote of the township, appraised value of real and personal property of such township, condition of school houses and furniture, and estimated value thereof, number and condition of books in the library, value and

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condition of school apparatus, and a complete statement by items of their expenditures.

To examine mode of teaching, books, furniture, &c.

SEC. 16. In visiting schools they shall examine the mode of teaching, government, books used, adaptation of school houses and furniture, the comfort and health of the scholars, condition of such school houses and furniture, and all matters connected with the comfort and efficiency of the schools.

May dismiss teachers.

SEC. 17. They may dismiss teachers for incompetence, immorality or neglect of duty, and suspend from the privileges of school any pupil found guilty of disorderly conduct, which suspension shall not extend beyond the current session, nor shall such dismissal prejndice the claim of a teacher for services rendered prior to the time of dismissal.

Complaint against teachers.

SEC. 18. Whenever a majority of the parents or guardians of the pupils attending a school shall present to the trustees of the proper township, a complaint in writing of the misconduct, inefficiency or incompetency of the teacher, such trustees shall forthwith investigate the cause of complaint, and if such complaint be properly sustained, shall dismiss the teacher.

Graded schools.

SEC. 19. Such board may establish graded schools or a modification thereof, where such establishment is practicable and convenient, and in such case they shall so classify the children of their township, as to secure to all equitable participation in the advantages thereof.

To report to county auditor and State superintendent.

SEC. 20. They shall on or before the first day of October in each year, furnish to the county auditor and State Superintendent, a full report of their proceedings, embracing all the information contained in the statement which they are required by this act to make to the annual township meeting, and also stating the number of select schools in the township, so far as the same can be ascertained, with the number of pupils, their ages and sex, and branches taught; and the average wages of teachers both in the public and in the select schools.

May call meeting of voters of the township.

SEC. 21. They may call a special meeting of the voters of township, whenever, in their opinion, the interest of the township requires it, giving twenty days' notice thereof; and they shall call such meeting, when required in writing to do so by twenty of the voters of the township; whenever a special meeting is called, the notice shall specify time, place, and object, and be set up in three public places in the township.

Township tax.

SEC. 22. Whenever a township tax shall be voted for school purposes, such trustees shall make out and file with the county auditor a list of so much of the taxable property in the township, with the names of the owners thereof, as belongs to such persons as may have been transferred for educational purposes, to an adjoining township, and also to such persons as may, for the same purposes, have been transferred to the township which shall be situate in the township of such persons' residence, unless the same be in an adjoining county.

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Duty of auditor in reference to township tax.

SEC. 23. The auditor shall take for his guide the assessment of the property of the township for State and county purposes, deducting therefrom the property of persons transferred to another township, and adding thereto the property of persons transferred from other townships, and shall make the proper assessment thereof in the same manner as for State and county revenue, shall add the amount of said tax to his duplicate in an appropriate column, and the said taxes shall be collected by the county treasurer as other revenues, and the said treasurer shall pay the same, upon the warrant of the auditor, to the treasurer of the proper township.

Tax, how assessed in case of persons transferred.

SEC. 24. Every person transferred for educational purposes to a township of an adjoining county, shall pay to the treasurer of such township a sum equal to the tax voted by such township, computing the same upon the property of such person in the township where he resides, according to the valuation thereof by the proper assessor, and in default of such payment shall be debarred from educational privileges in the township to which he may have been transferred, and the trustees of the said township shall notify the trustees of the township in which he resides, of such exclusion.

Tax may be paid to township treasurer.

SEC. 25. Tax payers may pay such special tax at any time to the township treasurer, whose receipt shall be received by the county treasurer as evidence of payment.

When the board fails to file an enumeration, auditor to procure it to be done.

SEC. 26. When any board of trustees shall neglect to file with the county auditor an enumeration of the children of the township as hereinbefore provided, the county auditor shall employ a competent person to take the same, and allow a reasonable compensation for such services, and shall proceed to recover the same, in the name of the State of Indiana, for the use of common schools, by action against the said trustees, in their individual capacity; and in such suit such auditor shall be a competent witness. A copy of such enumeration shall forthwith be forwarded by the auditor to the State Superintendent.

Action against township trustee.

SEC. 27. If a township trustee fail to discharge any of the duties of his office, any person may maintain an action against him for every such offense, in the name of the State of Indiana, and may recover for the use of the common school fund, any sum not exceeding ten dollars.

Penalty against trustee for failing to serve.

SEC. 28. Any person elected or appointed a township trustee, who shall fail to qualify and serve as such, shall pay the sum of five dollars, to be recovered as specified in the preceding section for the use therein named.

Of the Distribution of School Funds.

Statement of State Superintendent — duty of Auditor of State relating thereto.

SEC. 29. The State Superintendent shall, annually, by the third Monday in February, in each year, make out a statement showing the number of scholars in each county of the State, the amount of funds in the hands of county treasurers

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for distribution, and the proportional amount to which each county is entitled, and shall file the same with the Auditor of State, who shall arrange the necessary transfers between the counties; and in case it shall be found inconvenient to draw upon those counties having an excess, in favor of those counties having a deficiency, the county treasurer, (on being thereto requested by the Treasurer of State,) shall pay such excess into the State treasury; and to enable him to make such distribution, county treasurers, at the time of making their annual settlement, shall furnish to the State Superintendent a statement of money in their hands.

County treasurers to report money, &c.

Superintendent to inform auditore of the amt. of money to which their counties, &c., are entitled.

SEC. 30. The State Superintendent shall inform all county auditors of the sum to which their county is entitled, and also a statement of the amount to be distributed to each of the incorporated cities, towns or townships of such counties, according to the number in each.

Distribution by treasurers.

SEC. 31. County treasurers shall annually, on the fourth Monday of March, make distribution in accordance with such annual statement, of the fund applicable to school purposes, upon warrant of the county auditor, by paying the same to treasurers of incorporated cities, towns and townships of the county.

Powers and duties of incorporated cities.

SEC. 32. Incorporated cities and towns shall constitute school corporations, independent of the townships in which they may be situated, and shall be entitled to the proportional amount of school funds to which the number of children between the ages prescribed by law will entitle them; and shall, by trustees elected by the people, or by officers appointed by the corporation, perform all the duties required of township trustees,—prepare and file with the county auditor all the reports required of, and be subject to all the liabilities of such trustees,—shall have power, by a vote of the qualified voters of such corporation, or by an ordinance, to levy taxes for the support of their schools, after the public funds shall have been exhausted,—for the building, repairing and hiring of school houses,—for the purchase or leasing ground therefor,—for the furnishing thereof,—for the establishment or increase of school libraries, and for all other incidental expenses. They shall have power to establish graded schools, and generally to do and perform all other acts which, by this act, are authorized to be done and performed by township trustees: *Provided, however*, that in case any school district within the limits of such city or town, shall have heretofore contracted debts for school purposes, the said city or town shall make provisions for the payment thereof. The same transfers may be made for educational purposes from the neighborhood of any such city or town, to such city or town, and on the same terms and conditions as are hereinbefore provided in relation to transfers from one township to another.

Proviso.

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Of the investment of the Common School Fund.

Principal of fund to be loaned.

SEC. 33. The principal of all moneys belonging to the common school fund, and received into the county treasury, shall be loaned, and the interest paid for the support of schools, as provided in this act.

Loans to be made by county auditor.

SEC. 34. Such loans shall be made by the county auditor, who shall inform himself of the value of all real estate offered in pledge, and shall judge the validity of the title thereof; and all persons applying for a loan, shall produce to said auditor title papers, showing a clear title in fee simple, without incumbrance, and not derived through any executor's or administrator's sale, or sale on execution, or sale for taxes.

Appraisement.

SEC. 35. The trustees shall appraise any lands offered in mortgage.

Duty of appraisers.

SEC. 36. Such appraisers first being officially sworn, shall examine and appraise such land, and sign and give to the applicant a certificate, setting forth the fair cash value thereof at the time, without taking into consideration perishable improvements,—the number of acres, and a description of the same by numbers of congressional divisions, or of recorded lots, or by metes and bounds.

Preference to inhabitants of county, and loans to be equal among townships.

SEC. 37. In making such loans, preference shall be given to the inhabitants of the county, if the security be adequate; and the money shall be loaned equally among the different townships, if there are applicants in said townships.

SEC. 38. No land shall be received as security, unless situated in the county where the loan is made.

SEC. 39. The amount loaned to any person or company, shall not exceed three hundred dollars.

Incumbrances.

SEC. 40. The person applying for a loan, shall file with the auditor the certificate of the clerk and recorder, showing that there is no incumbrance on said land in either of their offices.

Oath of title.

SEC. 41. Such person shall also make oath to the truth of an abstract of his title, and that there is no incumbrance or better claim that he knows of.

Time of loan.

SEC. 42. No such loan shall be made for a longer term than five years.

Not to exceed one-half appraised value.

SEC. 43. The sum loaned shall not exceed one-half of the appraised value of the premises to be mortgaged, clear of all perishable improvements.

Oaths.

SEC. 44. The auditor shall have power to administer all oaths, and take all acknowledgments required by this act.

Record of mortgages.

SEC. 45. Mortgages taken for such loans, shall be considered as of record from the date thereof, and shall have priority of all mortgages or conveyances not previously recorded, and of all other liens not previously incurred, in the county where the land lies.

Cost of recording.

SEC. 46. The auditor shall cause such mortgages to be

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recorded, with due diligence, retaining the cost of recording out of the money borrowed.

Interest. SEC. 47. The rate of interest required shall be seven per cent. per annum, payable annually in advance.

When the note and mortgage may be proceeded on. SEC. 48. On failure to pay any instalment of interest, when the same becomes due, the principal sum shall forthwith become due, and payable, and the note and mortgage may be proceeded on, and the money collected.

Form of mortgage. SEC. 49. The mortgage may be in substance as follows, to-wit:

I, A. B., of the county of ———, in the State of Indiana, do mortgage to the State of Indiana, all [*here describe the land*] for the payment of ——— dollars, with interest at the rate of seven per cent. per annum, payable in advance, according to the conditions of the note hereto annexed.

Form of note. SEC. 50. The note accompanying the same may be in substance as follows, to-wit:

I, A. B., promise to pay to the State of Indiana, on or before the ———, the sum of ———, with the interest thereon at the rate of seven per cent. per annum, in advance, commencing on the ——— day of ———, 18—; and do agree that in case of failure to pay any instalment of said interest, the principal sum shall become due, and payable, together with all arrears of interest; and on failure to pay such principal or interest when due, two per cent. damages shall be collected, with costs, and the premises mortgaged may be forthwith sold by the county auditor, for the payment of such principal sum, interest, damages and costs.

Warrant. SEC. 51. On making loan of any such fund, the auditor shall draw his warrant in favor of the borrower upon the county treasurer, who shall charge it to the fund.

Loans and interest paid to treasurer. SEC. 52. All loans refunded, and all interest shall be paid to the county treasurer, and his receipt shall be filed with the county auditor, who shall give the payer a quietus therefor and make the proper entries.

Satisfaction. SEC. 53. Whenever the amount due on any mortgage shall be paid, and the treasurer's receipt filed therefor, the auditor shall endorse on the note and mortgage that the same have been fully satisfied, and surrender the same to the person entitled thereto, and on the production of the same, thus indorse, the recorder shall enter satisfaction upon the record.

When auditor to bring suit. SEC. 54. When the interest or principal of any such loan shall become due, and remain unpaid, the auditor shall proceed to collect the same by suit on the note, or by sale of the mortgaged premises, or both, at his option; he may, also, by action of ejectment, obtain possession of the mortgaged premises.

SEC. 55. In case of suit on the note, and judgment thereon, no appraisement of property shall be allowed.

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Notice of sale.

SEC. 56. Before sale of mortgaged premises, the auditor shall advertise the same in some newspaper published in the county where the land lies, if any there be; otherwise, in a paper in the State nearest thereto, for three weeks successively, and also by notices set up at the court house door, and in three public places in the township in which the land lies.

Sale.

SEC. 57. At such sale which shall be held at the court house door, the auditor shall sell so much of the mortgaged premises, to the highest bidder, for cash, as will pay the amount due for principal, interest, damages and costs.

When auditor shall bid in, &c.

SEC. 58. In case of no bid for the amount due, the auditor shall bid in the same on account of the fund, and as soon thereafter as may be, shall sell the same to the highest bidder for cash, or on a credit of five years, interest at seven per cent. per annum, being payable annually in advance.

Sale may be in parcels.

SEC. 59. Such sale may be in parcels, but shall not be for less than the amount chargable on said land; and if more, the overplus shall be paid to the mortgagor, his heirs or assigns.

Statement of treasurer of sale

SEC. 60. The treasurer shall attend and make a statement of such sales, which shall be signed by the auditor and treasurer, and after being recorded in the auditor's office, shall be filed in the treasurer's office, and such record, or a copy thereof, authenticated by the auditor's or treasurer's certificate, shall be received as evidence of the matters therein contained.

Deeds.

SEC. 61. The deeds shall be executed by the county auditor, and shall be entered on the books of the county treasurer, before delivery.

Treasurer's statement to vest title in State.

SEC. 62. When any land is bid off by the auditor, at such sale, no deed need be made therefor to the State, but the statement of such sale, and the record thereof, shall vest the title in the State, for the use of the fund.

Annual reports of loans.

SEC. 63. Annual reports of the operations of their respective offices, in regard to loans, and payments for school purposes, and to all moneys received on account of the common school fund, shall be made by the county treasurer and auditor to the board of county commissioners, at the first session after the first day of March.

Forms of book-keeping.

SEC. 64. Forms and modes of book-keeping for said officers shall from time to time be prescribed by the Auditor of State.

County commissioners to annually examine accounts.

SEC. 65. The board of county commissioners shall annually, at their March session, in the presence of the county auditor and treasurer, examine the accounts and proceedings of such officers in relation to said fund; they shall also inquire into the safety of the several loans made of said fund, and examine and compare the cash, notes and mortgages with the books and reports.

Report of board.

SEC. 66. Said board shall make a report of the result of such examination, showing:

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First. The amount refunded and the amount re-loaned, and the safety thereof.

Second. The amount of interest received and the amount paid over.

Disposition of such accounts.

SEC. 67. Such report shall be entered on the records of said board, and copies thereof signed by members of the board, the auditor and treasurer, shall be transmitted to the Auditor of State and to the State Superintendent of public instruction.

Penalty against board for neglect.

SEC. 68. Any member of the board of county commissioners, or any county auditor or treasurer neglecting to perform any of the duties required in the three preceding sections, shall be liable to indictment therefor, and to be fined in any sum not exceeding one hundred dollars, nor less than twenty dollars.

Compensation of auditor and treasurer.

SEC. 69. The county auditor and treasurer shall receive for their services each two and a half per cent. on all receipts, and disbursement of interest, and upon all sales for non-payment of loans, the five per cent. damages accruing thereon.

Fees.

SEC. 70. The following fees only shall be charged in case of mortgage for loans:

To each appraiser,	50 cents.
For recording mortgage,	50 "
For drawing mortgage,	50 "
For taking borrower's affidavit,	10 "
Clerk and recorder's certificate and examining title, each,	25 "

Election of State Superintendent.

SEC. 71. There shall be elected by the qualified voters of the State, at the general election, a State Superintendent of public instruction, who shall hold his office for two years.

His expenses.

SEC. 72. He shall receive for traveling, postage, stationery, and other expenses, a sum not exceeding five hundred dollars per annum.

Commencement of term, and oath of office.

SEC. 73. He shall enter upon his official duties on the second Monday of November, succeeding his election, and shall subscribe an oath of office, which shall be filed in the office of the Secretary of State.

His books, papers, office, clerk, and salary of clerk.

SEC. 74. The books and papers of his department shall be kept at the seat of government, where a suitable office shall be furnished by the State, at which he shall give attendance, when not absent on public business; and if the business of the office require it, he may employ a clerk, not more than six months in each year, at a salary of two dollars a day.

Address and report of Sup't.

SEC. 75. It shall be the duty of the State Superintendent, on his induction into office, to deliver an address before the State Board of Education, setting forth his views of the best method of giving efficiency to our educational system, with such suggestions as he may deem worthy of their consideration. He shall present an annual report containing a brief

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exhibit of his labors, the results of his experience and observation, noticing any imperfection in the operation of the system, and suggest the appropriate correction. He shall also prepare and append to said report, all statistical tables, the materials of which have been transmitted to his department by the proper officer.

To visit each judicial circuit.

SEC. 76. It shall be his duty to spend annually, on an average, at least ten days in each judicial circuit, superintending teachers' institutes, conferring with township trustees, counseling teachers, and delivering lectures on topics calculated to subserve the interests of popular education.

Ex-officio president of Board of Education.

SEC. 77. He shall be *ex-officio* President of the State Board of Education, preside at all meetings thereof, propose such measures for consideration and adoption as in his judgment may best subserve the interests committed to said board, and increase the efficiency of their individual labors, and submit for their inspection and approval, a list of text books for schools, and a catalogue of suitable works for school libraries.

To superintend purchase of township library.

SEC. 78. He shall superintend the purchase of township libraries, under such regulations as the State Board of Education may adopt, and report to said board his proceedings in relation thereto.

To determine appeals, &c.

SEC. 79. He shall receive and promptly determine appeals from township trustees, exercise such supervision over the educational funds as may be necessary to ascertain their safety and secure their preservation, and cause to be instituted in the name of the State of Indiana, for the use of the common school fund, all suits necessary for the recovery of any portion of said funds.

May require information of certain officers.

SEC. 80. He may require of county auditors, treasurers, township trustees, clerks and treasurers, copies of all reports by them required to be made, and all such other information in relation to the duties of their respective offices, and the condition of the funds and property of common schools, and the condition and management of such schools as he may deem important.

To prepare suitable forms.

SEC. 81. He shall prepare and transmit to the proper officers, suitable forms and regulations for making all reports, and conducting all necessary proceedings under this act, and all necessary instructions for the better organization and government of common schools.

Copies of this act to be distributed.

SEC. 82. He shall cause as many copies of this act, with the forms, regulations and instructions aforesaid, to be from time to time printed and distributed amongst the school townships, as he shall deem the public good requires.

Annual report.

SEC. 83. The annual report of the superintendent shall be made to the General Assembly, when that body is in session; otherwise, to the Governor, who shall cause the same to be published, and communicate a copy thereof to the next General Assembly.

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Report, what to contain.

SEC. 84. With the report of his labors and observations, he shall present:

A statement of the condition and amount of all funds and property appropriated to purposes of education;

A statement of the number of common schools in the State,—the number of scholars in attendance,—their ages, sex, and the branches taught;

A statement of the number of private or select schools in the State, so far as the same can be ascertained,—the number of scholars, their age, sex, and branches taught;

Estimates and accounts of the expenditures of the public school fund;

Plans for the management and improvement of the common school fund, and for the better organization of common schools.

Licenses to teach.

SEC. 85. He shall, by himself or deputy, [of whom he is authorized to appoint one in each county,] examine all applicants for license, and, if found qualified, license them as common school teachers, for one or two years. Such superintendent and his deputies shall keep account of all licenses issued, specifying date and period of their expiration. Such licenses may be revoked, if the person prove incompetent; but the teacher's claim for services to the date of revocation shall not be prejudiced thereby. All licenses shall be gratuitous.

Lands belonging to Common Schools.

Trustees to have control of school lands.

SEC. 86. The custody and control of all lands belonging to the common school fund shall be with the trustees of the civil township in which the same shall be situated.

May lease them.

SEC. 87. They shall have power to lease such lands for any term not exceeding three years, reserving rents payable in money, property, or improvements to be made on the land.

Same.

SEC. 88. But if directed by a vote of a majority of the voters of such township, such leases may be made for any term not exceeding ten years.

SEC. 89. Townships may acquire land by devise or gift, and hold the same in accordance with such gift or devise.

To have powers and rights of a landlord.

SEC. 90. Such trustees may have all rights and powers of a landlord, either in their official names, or in the corporate name of the township, in coercing fulfilment of contracts relating to such lands, and preventing waste or damage, or of recovery for the same when committed.

To preserve personal property.

SEC. 91. Such trustees shall preserve all personal property belonging to such township, and may sell the same from time to time in such manner as will best promote the interest of such township.

Proceedings upon petition to sell land.

SEC. 92. At any time when five voters of any township shall, by petition to the trustees, set forth their desire for

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the sale of all or of any part of the land in such township, at any time before notice is given for the annual election of trustees, such trustees shall insert in such notice the further notice that a balloting will then be had to determine whether the land so petitioned for, shall be sold or not.

Copy of petition

SEC. 93. A copy of such petition shall be entered on the book containing the record of the proceedings of such trustees, together with the time of its reception, and their action thereon.

Manner of voting.

SEC. 94. If a voter favor the sale of such land, he shall write on his ballot the word "sale;" if he oppose the sale, he will write the words "no sale."

A majority must vote favorable.

SEC. 95. No such sale shall be allowed, unless a majority of all the votes cast in such township shall vote in favor of it, and unless the number of votes constituting such majority shall exceed fifteen.

Certificate of votes.

SEC. 96. A certificate showing the number of votes given for and against such sale, shall be made out and signed, and within seven days after such election, filed with the clerk of such township.

Proceedings upon return of the vote.

SEC. 97. Such trustees shall enter such return on their record books, and if satisfied that a majority, and more than fifteen voters have voted for such sale, they shall enter their opinion on their record book, and shall proceed:

First. To divide the lands so voted to be sold into such lots as will ensure the best price.

Second. To affix a minimum price to each lot, not less than one dollar and twenty-five cents per acre, below which it shall not be sold.

Third. To certify such division and appraisement to the proper county auditor, together with a copy of all their proceedings had in relation to the sale of said lands.

Certificate and return to be laid before county commissioners who shall direct land to be sold.

SEC. 98. Such certificate and return shall, by such auditor, be laid before the board of county commissioners, at their first meeting thereafter, and said board, if satisfied that the requirements of the law have been substantially complied with, shall direct such land to be sold, which sale shall be conducted as follows:

First. It shall be made by the auditor and treasurer.

Second. Four weeks' notice of the same shall be given, by posting up notices thereof in three of the most public places in the township where the land is situated, and at the court house door, and by publication in a newspaper published in said county, if any, otherwise in the newspaper in the State nearest thereto.

Terms of sale.

SEC. 99. One-fourth of the purchase money shall be paid in hand, and interest for the residue for one year in advance, and the residue in ten years from such sale, with like interest annually in advance.

When contract to be forfeited.

SEC. 100. On failure to pay any such annual interest, when the same becomes due, the contract shall be forfeited,

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and the land shall immediately revert to the township, and the auditor shall forthwith proceed again to sell the same on the terms above specified.

Proceeds of second sale.

SEC. 101. If, on such second sale, such land shall produce more than sufficient to pay the sum owing therefor, with interest and costs, and five per cent. damages, the residue shall, when collected, be paid over to the first purchaser, or his legal representative.

How original contract revived.

SEC. 102. At any time before sale, payment of the sum due, with interest for the delay, and all costs, together with two per cent. damages on the whole sum owing for said land, shall prevent such sale, and revive the original contract.

In case of waste

SEC. 103. In case of such forfeiture, the original purchaser may be sued for waste or unnecessary injury done to such land.

Suit.

SEC. 104. Such suit shall be prosecuted by the auditor, in the name of the State, for the use of the common school fund.

Redemption of lands.

SEC. 105. The former owner of such delinquent land, his heirs or assigns, may within one year after sale, redeem the same by paying to the purchaser, his heirs, executors, administrators or assigns, or by depositing with the treasurer of the proper county, the amount of purchase money paid by such purchaser, with interest thereon at the rate of ten per cent. per annum, together with all subsequent payments for taxes, interest or principal, which such purchaser, or those claiming under him, may have made thereon.

Private sale.

SEC. 106. When any land offered for sale shall remain unsold, the county auditor may dispose of the same at private sale, for the best price that can be had therefor, not being less than the minimum price affixed thereto.

Statement of sale.

SEC. 107. A certified statement of such sale shall be made and signed by the auditor, and being first recorded by the county auditor in the records of the board of county commissioners, shall be delivered to the purchaser when he makes his first payment, and shall entitle him to a deed when the terms of such purchase shall have been fully complied with.

Rights of purchaser.

SEC. 108. Every purchaser, until forfeiture, shall be entitled to all the rights of possession before existing in such townships, and of all rights and remedies for rents becoming due, or breaches of covenant accruing after his purchase under any lease existing at the time of his purchase, and for all waste committed thereafter.

Ten per cent. damages in case of failure.

SEC. 109. A purchaser at such sale, failing to make the first payment as above required, shall pay ten per centum on the sum bid, to be recoveded by action before any court having jurisdiction, to be prosecuted for, by the county auditor, in the name of the State, for the use of the common school fund, and the auditor and treasurer shall be competent witnesses.

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Assignments.

SEC. 110. Assignments of certificates of purchase shall be valid only if acknowledged before the county auditor, who shall record the same.

Payment of interest on residue to entitle purchaser to retain loan.

SEC. 111. When a residue of purchase money becomes due, the purchaser may retain the same as a loan, from year to year, on payment annually in advance, of the interest thereon, at the rate then established by law on loan of such funds; but he shall receive no deed until full payment is made: and the General Assembly may at any time hereafter so change the law as to require payment of such purchase money after the original credit has expired, giving the party one year's notice.

SEC. 112. Purchasers may at any time before due, pay a part or the whole of such purchase money.

In case of lost or destroyed certificate.

SEC. 113. When any such certificate shall be lost or destroyed, before a deed be made, on proof thereof by affidavit of the person interested, or other competent testimony, to be filed with the county auditor, and after three months' notice of intention to apply for a new certificate, given in some newspaper published nearest to where the land lies, such auditor may issue the same to the person entitled thereto.

Purchase money to be paid to treasurer, &c.

SEC. 114. Purchase money and interest, and all costs and damages above provided for, shall be paid to the treasurer of the proper county, and his receipt therefor filed by the person paying with the county auditor, who shall issue his quietus therefor.

Amt. of receipt to be endorsed on certificate.

SEC. 115. When such payment is in completion of any contract of sale, the amount of such receipt shall be endorsed by the county auditor on the certificate of purchase.

Deed.

SEC. 116. On full payment for such land, a deed shall be executed by the county auditor, and entered on the record book of the board of county commissioners.

Acknowledgment.

SEC. 117. Such deed shall be acknowledged at the cost of the grantee by the county auditor, as in other cases, and thus executed and delivered, shall vest in the grantee, his heirs and assigns forever, a complete title to the land.

Petition for sale of lands.

SEC. 118. The voters of any township may, in the absence of a vote to sell land, and in lieu thereof, petition the board of township trustees for such sale; and such petition, if signed by a majority of all the voters of the township, be filed with the county auditor, and the same proceedings shall be had as are provided in the preceding sections upon a vote of the inhabitants of the township for such sale. Such petition and certificate shall also be recorded in the record book of the board of township trustees, and of the county auditor.

Same subject.

SEC. 119. When a majority of the voters shall, by petition, designate any place in the township as the place of sale of any school land, the said petition, duly certified and recorded in the record of the board of township trustees, shall be filed with the county auditor, who shall record the same, and

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thereupon such sale shall be held at such place in the township, instead of at the court house, as hereinbefore provided.

Rents of lands.

SEC. 120. All moneys derived from rents of a school section, or from lands heretofore acquired by a township for other than ordinary school purposes, shall be paid to the county treasurer.

Miscellaneous Provisions.

Books, papers, &c., subject to inspection.

SEC. 121. The books, papers and accounts of any township trustee, their clerk or treasurer, shall be subject to the inspection of the county auditor, and of the board of county commissioners of the proper county.

County commissioners may summon before them trustees, &c.

SEC. 122. For the purpose of said inspection, said board of county commissioners and auditor may, by subpœna, summon before them any such trustees, clerk or treasurer, and require the production of such books, three days' notice of the time to appear or produce being given.

Books may be corrected.

SEC. 123. If such books have been imperfectly kept, said board of commissioners may correct them; and if fraud appear, shall remove the person guilty thereof.

Service of process.

SEC. 124. Process in suits against a school township shall be by summons executed by leaving a copy thereof with the clerk of such township ten days before the return day thereof.

Suits, how brought.

SEC. 125. Suits brought on behalf of a school township, shall be brought in the name of the State of Indiana for the use of such township.

Prosecuting attorney to prosecute suit.

SEC. 126. When suit on behalf of or against a school township shall be entered in the circuit or supreme court, the prosecuting attorney of the proper circuit shall attend to the prosecution or defense of such township as part of his official duty.

Appeals.

SEC. 127. An appeal shall lie from the decision of a township meeting or of a board of township trustees to the county auditor, thence to the State Superintendent, whose decision shall be final.

When no costs to be recovered.

SEC. 128. Any person who shall sue for or on account of any decision, act, refusal or neglect of duty of the township trustees, or of county auditor, for which he might have had an appeal according to the provisions of the two preceding sections, shall not recover costs.

Character and qualification of teachers.

SEC. 129. No teacher shall be employed unless he be of good moral character, nor until he shall have procured a certificate of qualification, as provided in this act.

Tax for building purposes.

SEC. 130. The voters of any township shall have power at any general or special meeting to vote a tax for the purpose of building or repairing school houses, and purchasing sites therefor, providing fuel, furniture, maps, apparatus, libraries or increase thereof, or to discharge debts incurred therefor, and for continuing their schools after the public funds shall have been expended, to any amount not exceeding annually,

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fifty cents on each one hundred dollars of property, and fifty cents on each poll.

Words "county auditor," how construed.

SEC. 131. The words "county auditor," in this act, shall be construed to mean the county auditor or the clerk of the circuit court doing the business of such auditor.

Debts heretofore contracted.

SEC. 132. Debts heretofore contracted by any school district for school purposes, shall be provided for by the township or townships in which it is situated.

School commissioners.

SEC. 133. School commissioners in counties where the office has not been heretofore abolished, shall, at the term of the board doing county business next after the taking effect of this act, make final settlement of accounts with the county auditor, which settlement shall be entered upon the records of said board,—shall deliver to said auditor all books, papers and securities for money loaned appertaining to his said office, and shall pay over to the county treasurer all moneys remaining in his hands as such commissioner. The office of school commissioner shall thereupon be abolished, and its duties shall thereafter be dischared by the county auditor and treasurer, as provided in this act.

Prosecution of suits in favor of school fund.

SEC. 134. County auditors shall commence and prosecute to final judgment suits in the name of the State of Indiana, for the use of the common school fund, against any person who held the office of school commissioner, and his securities for, [therefor,] and in all cases where such defaulting person, or any of his sureties, shall have absconded or otherwise left the State of Indiana, the county auditor shall commence and prosecute to final judgment, in the name of the State of Indiana, for the use of the common school fund, writs of foreign and domestic attachment against the goods, chattels, lands and tenements of such commissioner or surety, which said writs may be levied upon any property subject by the laws of the State to execution; and the proceedings in such case shall be governed by the statutes regulating proceedings in foreign and domestic attachment, except that the bonds required of individuals shall be dispensed with.

Schools to be free.

SEC. 135. All common schools shall be open to the pupils thereof without charge.

Surplus revenue

SEC. 136. The auditor shall take an account of the amount of the surplus revenue fund heretofore distributed to the several counties of this State, and also an account of the proportion to which each county would be now entitled according to the number of taxable polls in each, and shall equalize the amount of State funds in each county according to population, as far as may be, by means of saline and bank tax funds annually distributed from the State.

Debts may be compounded.

SEC. 137. The county auditor and treasurer, under the direction of the board of county commissioners, shall have the power to compound for debts of any of the school funds which are considered as lost or unsafe.

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School tax for libraries.

SEC. 138. There shall be assessed, collected and paid, as the State and county revenues are assessed, collected, and paid:

First. On the list of property taxable for State purposes, the sum of one-quarter of one mill on each one dollar.

Second. There shall be paid by every person liable to pay a poll tax for State purposes, the sum of twenty-five cents: *Provided*, That said tax shall continue for two years only.

How applied.

SEC. 139. The said taxes shall be applied exclusively to the purchase of township school libraries, under the direction of the State Board of Education, but no sectarian work shall be admitted into such libraries.

Taxes to be paid to treasurer of State.

SEC. 140. The amount of said taxes when collected, shall be paid by the county treasurers to the Treasurer of State, at the time of their making their annual settlement, and shall be paid out by that officer upon the warrant of the Auditor of State.

Distribution of library.

SEC. 141. The State Board of Education shall, when such libraries have been received, cause the same to be distributed to the counties as follows: To each county having a population of 15,000 inhabitants, and upwards, ten libraries; to each county having a population of than 10,000, and less than 15,000 inhabitants, eight libraries; and to each county having a population of less than 10,000 inhabitants, six libraries, which shall be distributed equitably by the board of county commissioners to the townships of their respective counties.

Who to preserve libraries.

SEC. 142. Such libraries shall be in charge of the boards of township trustees—shall be deemed the property of the township, and shall not be subject to sale or alienation for any cause whatever.

Same subject.

SEC. 143. Such trustees shall be accountable for the preservation of said libraries—may prescribe the time of taking, and the period of retaining books—assess damages done to them by persons entitled to their use, and adopt rules and regulations necessary for their preservation and usefulness.

Where libraries to be kept.

SEC. 144. The voters of the township may determine, at any annual meeting, whether the said library shall be deposited at some central point or at one or more eligible places in the township, for the convenience of scholars and families. It shall be the duty of the township trustees to elect annually, one of their number township librarian.

Who entitled to use library.

SEC. 145. Every family in the township shall be entitled to the use of one volume at a time from said library, although no member of such family attends school.

Library to be open.

SEC. 146. The library shall be open to all persons entitled to its privileges, throughout the year, without regard to school sessions.

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State Board of Education.

SEC. 147. The State Board of Education shall consist of the State Superintendent of Public Instruction, the Governor, the Secretary, Treasurer and Auditor of State, who shall meet annually at Indianapolis on the second day of November, for the purpose of more effectually promoting the interests of education, by mutual conference, interchange of views and experience of the practical operation of the system, the introduction of uniform school books, the adoption of the most eligible means of facilitating the establishment of township school libraries, and the discussion and determination of such questions as may arise in the practical administration of the school system. Meeting and duties of State Board of Education.

CHAPTER 99.

AN ACT for the protection of Sheep.

[APPROVED JUNE 15, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That if any dog shall kill or injure any sheep, the owner or harborer of such dog shall be liable for all damages that may be sustained thereby, to be recovered by the party injured, before any court having competent jurisdiction. Owner of dog liable for damages.

SEC. 2. It shall be lawful for any person, at any time, to kill any dog which may be found running, worrying, or injuring sheep. When dog may be killed.

SEC. 3. That if the owner of any dog which is in the habit of running from home and wandering about without the presence of its owner, shall neglect or refuse to confine such dog, after due notice given of its wandering habits, it shall be lawful for any person to kill such dog whenever it may be found running about, off the premises, and away from the presence of its owner. Dog running about, &c., may be killed.

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CHAPTER 100.

AN ACT to encourage the growth of Silk.

[APPROVED MAY 13, 1852.]

Premium.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the board of county commissioners in any county may, at their option, allow on silk raised in the county, at the following rates, namely: for every pound of cocoons, fifteen cents; for every pound of reeled silk, twenty-five cents, on the following conditions:

Proceedings to obtain premium.

SEC. 2. Any resident of the State may present to any justice of the peace of the county in which he resides, one pound or more of good, dry, silk cocoons, or of well reeled silk. And if such resident shall, by his own oath or that of any other credible person, establish to the satisfaction of such justice that the cocoons presented were raised in such county, or, as the case may be, that the silk was reeled in such county from cocoons raised within the State, and that no portion of such cocoons or reeled silk had before been presented to any justice for examination and certificate; such justice shall issue his official certificate, specifying the number of pounds of cocoons or reeled silk presented, the date, the owner's name and residence, and the names, if any, of the testifying witnesses, which certificate shall be to the board of county commissioners sufficient evidence of the facts therein stated, and shall be retained and filed by such board; and no bounty shall be allowed by such board, except in pursuance of such certificate.

CHAPTER 101.

AN ACT to enable Trustees to receive Lands and Donations, and convey the same, for the use of Schools, Churches, Religious Societies, Masonic and Odd Fellow Lodges, Sons and Daughters of Temperance, and for the construction of Cemeteries, Houses of Worship, or other buildings therein mentioned.

[APPROVED JUNE 17, 1852.]

Societies may hold lands.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any persons, congregation, society, church, or any lodge of Free Masons, or Odd Fellows, whether Chapter Encampment, or subordinate, and any Temple or division of the Sons or Daughters of Temperance, and any other voluntary association for religious, educational, scientific or benevolent purposes, may take by purchase, grant, or

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devise, lots or tracts of land, not exceeding one hundred and sixty acres, upon which to erect buildings for religious worship, or for such other purposes as will best attain the objects of said several organizations; and for that purpose may elect not less than three, nor more than five trustees, who shall possess the powers, and perform the duties herein named.

Meaning of the word society.

SEC. 2. The word society in this act shall be deemed to include churches, associations, congregations, lodges, divisions and all other orders enumerated in the preceding section.

Notice of election of trustees.

SEC. 3. Notice of election for trustees shall be given at least ten days previous thereto, by publication in a newspaper of the county, if any, otherwise by posting such notice in three public places in the proper township, one of which shall be at the place of the proposed election. Such notice shall state the time, place and object of such election; and the same shall be held at the usual place of worship, or meeting of such society, if any there be.

Duty of clerk of society; his certificate.

SEC. 4. Such society at the first, and every subsequent election, shall appoint a clerk thereof, who shall take, count, and make a poll list of the votes given for trustees; and within ten days thereafter, shall deposit in the recorder's office of the county where the real estate granted is situate, a certificate setting forth the notice of such election, the time and place where the same was held, the name of the society and persons elected as trustees thereof; and the recorder of such county shall record the same among the records of deeds in his office.

Certificate to be evidence.

SEC. 5. As between such society, the trustees thereof, and all persons claiming under them, and any person granting real estate thereto, and all persons claiming under him, such certificate shall be conclusive evidence of the matters and things therein recited; and as between such society, the trustees thereof, and all persons claiming under them, and all other persons, it shall be presumptive evidence of such matters.

Tenure of office of trustees.

SEC. 6. Such trustees shall severally hold their offices until their successors are duly chosen according to the rules of such society, and any society by a majority vote, at a meeting of one third of the resident members thereof, notice being given as aforesaid, may remove such trustees and elect others in their stead.

By-laws.

SEC. 7. Such society, or the trustees thereof, when authorized [organized] for that purpose, may establish all necessary by-laws to carry out the objects of its organization.

How trustees may be chosen.

SEC. 8. Any society may select or appoint trustees according to its common usage or custom, if they desire it; but a certificate of such selection or appointment, and the record of the same, as in case of their election, shall not be dispensed with.

Their corporate powers.

SEC. 9. Such trustees shall be deemed a body politic and corporate, under such name and style as the society may

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elect, and by that name shall have power to contract, sue, be contracted with, and sued, with like effect as other persons or corporations.

How society may change name.

SEC. 10. Such society may, at any meeting, by giving ten days notice of the time and purpose thereof, change their corporate name, but the name chosen by such society shall not be assumed, until a record has first been made of the fact in the recorder's office of the proper county. Such change shall not affect the rights or liabilities of the society or of other persons or parties.

Trustees may receive lands.

SEC. 11. The trustees chosen as herein provided, after record of their election or appointment is made in the recorder's office of the proper county, shall have power and authority as such trustees, to receive conveyances of lands, whether the same be by purchase, gift, or otherwise; and to hold the same to their successors as such trustees in perpetuity, for the sole and conclusive benefit of such society, and for the uses declared in such conveyance or grant.

May acquire and appropriate personal property.

SEC. 12. Such trustees and their successors in office may also acquire and possess, for the use of any such society, personal property not exceeding in value the sum of five thousand dollars; and may appropriate the same, and the income or interest thereof, and all other funds and incomes in their hands as such trustees, for the purposes designated by such society, not inconsistent with the trust.

May sell or loan corporate property.

SEC. 13. Such trustees, to more effectually carry out the objects of their trust, may sell, loan, or otherwise dispose of their corporate property; and any conveyance thereof by such trustees, or a majority of them, in behalf of such society, shall vest in the purchaser of the same, all the right, title and interest thereto; but the provisions of this section shall not be construed to affect any gift, bequest or devise to such society, or to trustees for its use, nor to defeat the intentions of the grantor, donor, or testator.

When dissolved society may be revived.

SEC. 14. When any society within the meaning of this act, shall have been dissolved from any cause, a majority of persons interested therein may revive the same, within five years after such dissolution, by electing a new board of trustees, and making record of such election in the recorder's office of the proper county, as hereinbefore provided.

To what societies this act shall extend.

SEC. 15. The provisions of this act shall extend to every society, educational or religious, which, previous to its passage, had acquired land for the purpose of erecting a house of worship, or other appropriate building, not exceeding five acres, upon condition that the consent of two-thirds of the persons interested in such land be first obtained, and the trustees be elected and certified, and such other proceedings had, as hereinbefore directed for the election of trustees.

Officers of society may be trustees.

SEC. 16. The officers of any society, by whatever name such officers may be designated, elected in the manner prescribed by this act, or according to the rules of any such

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church, society or order, may, whenever the laws or usages of the same require it, perform the duties of trustees, and, in their proper name and title, shall possess all the powers, and be subject to the same liabilities as trustees, and the certificate of the election of such officers shall be recorded in the recorder's office of the proper county, as in the case of trustees.

Provisions of this act to extend to associations procuring lands for cemeteries.

SEC. 17. All the provisions of this act are hereby extended, so far as the same may be applicable, to any individuals who may unite themselves together for the purpose of receiving donations of lands or purchasing the same for cemeteries.

Conveyance, and articles to be recorded; corporate powers.

SEC. 18. When such donations or purchases shall be made to or by any such individuals, and a certificate thereof, or conveyance therefor, together with the articles of association by which such individuals have become united for such purpose, shall be filed in the office of the recorder of the proper county, and by him recorded, such individuals shall enjoy all the privileges necessary for the preservation and protection of such cemetery, in the same manner as if such individuals were regularly incorporated by law, and such cemetery shall forever remain a burial place for the dead.

Lands conveyed to county board for cemetery.

SEC. 19. Lands conveyed to the board of county commissioners, by deed duly recorded, for the purpose of a public or private cemetary, shall be held by such board forever in trust for such purpose.

Where lots are laid off, persons shall bury within them.

SEC. 20. In all cases where the donors or donees of any public burying ground, shall lay the same off into lots, plainly designated by corner stones or posts, and record a plat thereof in the recorder's office, then persons interring in said burying place, shall bury within the lots so designated, and not out of them.

Right of donor.

SEC. 21. The donor of a private burying ground, his heirs and assigns forever, shall have the exclusive right of admitting corpses for interment, and shall direct where the same shall be buried; and may grant any right of burial in such ground, as shall not interfere with the graves already there, or the rights of persons who have buried their dead in such ground.

Burying grounds, how held.

SEC. 22. No burying ground specified in this act shall pass or be held contrary to the intent or meaning of this section, by virtue of any subsequent devise, purchase, descent or conveyance of the donor.

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CHAPTER 102.

AN ACT providing for the election or appointment of Supervisors of Highways, and prescribing certain of their duties, and those of county and township officers in relation thereto.

[APPROVED JUNE 18, 1852.]

Supervisor; when elected; term of office, and compensation.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the qualified voters in each township of the several counties in this State, shall elect a supervisor in each of the road districts in their respective townships at the annual township elections, held on the first Monday in April in each year, who shall hold his office for one year thereafter; and each supervisor shall receive for all necessary service, the sum of one dollar per day, to be paid out of the township treasury.

What tickets in an election for supervisor deemed illegal.

SEC. 2. If, upon counting the votes at any election provided for in the next preceding section, any ticket shall be found with more than one person voted for as such supervisor, it shall be deemed an illegal vote as far as relates to such officer, and shall not be counted to such person for that office.

In case of a failure to elect, or vacancy, township clerk or treasurer to appoint.

SEC. 3. When there shall be a failure to elect a supervisor for any district, and in case a vacancy shall occur in said office from any cause, the clerk of the township in which such district is situate, shall appoint such supervisor as soon as he is informed of such failure or vacancy, who shall hold his office until the next annual election; and in case such clerk shall fail to make such appointment, upon information thereof, after ten days from and after such April election, the treasurer of such township shall appoint such supervisor, and cause him forthwith to be notified thereof in writing by a constable of the township; and when an appointment of supervisor is made by such clerk or treasurer, he shall make out a notice thereof, and deliver the same to a constable of such township within three days after such appointment, and such constable shall serve the same on the person appointed, and make return thereof to such clerk within seven days thereafter; but any person may be exempt from serving as such supervisor by paying into the township treasury the sum of six dollars; and in such case the vacancy shall be filled as hereinbefore provided: *Provided, however*, that no person shall be compelled to serve oftener than once in four years.

Penalty for failing to accept or pay commutation.

SEC. 4. Any person liable to perform highway labor, who shall fail to accept the office of supervisor in his district, and to qualify and serve as such when duly elected or appointed, or to pay the sum in the next preceding section specified as a commutation therefor, within twenty days after his appointment or election, shall forfeit the sum of six dollars, to be

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recovered before any justice of the peace of the township, for the benefit of the township in which such district is situate; and in case of such failure, the township clerk, if there be one, shall bring suit for such penalty in the name of such township; and if there be no such clerk, the auditor of such county shall bring such suit, and in case of recovery of such penalty, it shall be paid into the treasury of such township.

Duties of supervisor.

SEC. 5. Such supervisor shall take an oath before entering upon the discharge of his duties, for the faithful performance thereof; he shall carry into effect all the orders of the trustees of the township in which the road district is situate, touching the highways and bridges therein, and keep the same in good repair; he shall also call out all persons in such district liable to work on highways therein, superintend the labor thereon, and see that the same is faithfully performed; sue for and collect all fines and commutation money due such district.

To call out hands in May or June.

SEC. 6. Such supervisor shall call out all the male persons except insane, idiots, deaf and dumb, and blind persons, in such district who are residents of this State, and over the age of twenty-one and under fifty years, and not exempt from such labor, during two days in the months of May or June of each year, and shall require each of such persons to work on the highways in such district eight hours each day, and to furnish in such labor any tool the supervisor may direct, if the demand therefor be a reasonable one.

Horse or ox teams, plow, cart or wagon &c.

SEC. 7. Such supervisor may require any person liable to work on such highways, who may be the owner of an ox or horse team, and a plow, cart, or wagon, to furnish the same and a driver in such labor upon such highway, and such person shall receive credit for three days' labor therefor, and be receipted accordingly by such supervisor.

To make out list of persons, present to clerk notify hands, &c

SEC. 8. The supervisor of such district shall make out, within ten days after he is qualified, a list of all the persons in such district liable to work on the highways thereof, and present the same to the clerk of such township, who shall enter the same on the record book thereof. Such supervisor shall notify each person within his road district liable to work on the highways thereof, by verbal or written notice, and if written, to be left at the residence of such person, of the time and place of working on such highways, at least three days prior to the time designated for such working.

Persons exempt

SEC. 9. On application to the township trustees, any person liable to work on highways may be exempt therefrom, if it be shown that he is unable from bodily infirmity to work thereon, and that he is too poor to pay the commutation therefor; also, any person belonging to any legally organized fire company; and in such cases the clerk of such township shall execute to such person a certificate thereof, which shall, on being presented to the supervisor, entitle him to such exemption.

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Payment of 75 cts. per day to exempt from labor; supervisor to bring suits against delinquents, and proceedings therein

SEC. 10. Any person may be exempted from working on highways, by paying to the township treasurer seventy-five cents for each day he is liable to work thereon, and in such case he shall be receipted therefor by such treasurer; and on presenting such receipt to the clerk of the township, such clerk shall give to such person a certificate thereof, which, on being presented to the supervisor, shall exempt him from such labor during the time specified in such certificate, in accordance to the sum paid. Such supervisor within ten days after warning the hands liable to work in such district, shall bring suit in the name of the township in which such district is situate, against such persons as fail to work or pay over the commutation money therefor, before any justice of the township; and in such suit it shall only be necessary for an account stating the number of days which each of such persons so failed, and charging one dollar per day each therefor, to be filed as a cause of action; and in case of recovery by such supervisor, the judgment shall be rendered for one dollar for every day the defendant so failed, and costs of suit, and no stay of execution, or benefit of valuation or appraisement laws, shall be allowed on such judgment; and in case such supervisor shall fail to bring such suit, he shall forfeit and pay the sum of ten dollars, to be recovered before any justice of the township in the name thereof, upon complaint of the treasurer thereof; and all money so recovered under the provisions of this section, shall be paid into the township treasury by such supervisor; and in case he shall fail to pay over such money within ten days after the receipt thereof, he shall be prosecuted by such treasurer under the statute regulating the punishment of those guilty of neglect of official duty, and shall be liable to its penalty.

Application of money.

SEC. 11. All money collected by virtue of the preceding section, shall be credited on such clerk's books to such road district; and shall be applied to the improvement of the highways thereof, under such regulations as such trustees shall adopt.

Substitute; number of hours to work; penalty.

SEC. 12. Any person liable to perform labor on the public highways, when notified for such purpose, may appear in person, or by an able bodied substitute, and the person or substitute so appearing, shall actually work eight hours in each day, under a penalty of twelve and a-half cents for every hour such person or substitute shall be in default, to be deducted by the supervisor from the price of the day's labor.

Persons remaining idle, hindering others, &c., to forfeit $1 00.

SEC. 13. If any such person or his substitute after appearing, shall remain idle or not work faithfully, or shall hinder others from working, such offender shall, for every such offence, forfeit the sum of one dollar, to be collected as other fines and forfeitures herein specified, and he shall be discharged by the supervisor without credit for any part of the work he may have done.

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Supervisor to apply money to repair of roads.

SEC. 14. Such supervisor, within ten days after the receipt of any money, which he is not required to pay over to the township treasurer, or of any money ordered by the township trustees, to be paid to him for the repairs of highways, shall proceed to employ laborers to repair the highways in his district, but shall not pay more to such laborers than is customary in his district for similar purposes; and such supervisor shall attend such repair, but in no case shall such supervisor neglect to repair such highways. And if such labor and tax, or labor where no tax has been assessed, shall be insufficient therefor, he shall call out the hands in his district to complete such repairs.

Credit for extra labor.

SEC. 15. When such extra labor provided for in the next preceding section, shall not require all the hands in the district, or an equal amount of labor from each, the supervisor may assess upon the same, upon such number of the hands as he may deem sufficient, and for the excess of work performed by any one over the average amount performed by all, he shall give to each person performing such excess a certificate of the amount thereof, which shall be a good credit to the holder thereof, on account of any subsequent labor to be done by him on the highways in said district.

Ditches, drains, dams, gravel, earth, sand, stone and trees; damages.

SEC. 16. The supervisor, or any other person by his order, may enter upon any land adjoining or near to any highway in his district and thereupon construct such ditches, drains and dams, and dig and remove any gravel, earth, sand or stone, or cut and remove any wood or trees that may be necessary for the proper construction, repair or preservation of such highway; and any person aggrieved may petition the township trustees for an assessment of damages occasioned thereby; and in such case, such trustees shall appoint three disinterested persons in such township to view the locality where the grievance was committed, and assess such damages within twenty days after such appointment, they having first taken an oath to faithfully discharge their duties, before some officer authorized to administer oaths; and such viewers shall make report thereof within ten days after such assessment, to such trustees, having first given notice thereof to the complainant, and such trustees shall order the damages assessed to be paid out of the township treasury, unless they should deem them unreasonable, in which case they may reduce the amount.

Obstructions.

SEC. 17. When a public highway running through, or bordering on any plantation, shall become obstructed, the owner or occupant of such plantation shall remove such obstruction as soon as the same has come to his knowledge, for which the proper supervisor shall allow him a reasonable credit on his liability to work on the highways, except such obstruction is caused by the act of the owner of such plantation, in which case he shall be required to remove the same, without any such credit.

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Trees may be removed.

SEC. 18. All trees standing or laying on the land over which any highway shall be laid out, which it shall be necessary to remove in the opening of such highway, shall belong to the owner of such land, if he shall avail himself of the same, before the supervisor is required to open such highway; but all such trees or down timber, or other material found on such premises, may be taken and used by the proper supervisor, for the construction or repair of the highway or bridge on such land.

Guide-posts and boards.

SEC. 19. Every supervisor shall erect and keep up, at the forks of every highway, and at every crossing of roads within his district, guide posts and boards, with proper inscriptions and devices thereon, the expense thereof to be paid out of the township treasury.

Road tax.

SEC. 20. The township trustees upon petition therefor, of a majority of the qualified voters of any township, shall assess annually a road tax of not less than five, nor more than twenty five cents on the hundred dollars, to be levied according to the amount of real and personal property owned in said township subject to taxation, to be collected as provided in the bill defining the duties of township trustees: *Provided, however*, that the tax so assessed on real estate may be worked out in the road district in which such real estate lies, and the tax assessed on personal property in the district where the owner thereof resides, at the rate of seventy-five cents per day. The supervisor shall obtain a list of all road tax assessed on each individual, and his certificate for the amount worked out shall be taken by the treasurer of the county in payment of said tax.

Proviso.

Same subject.

SEC. 21. When a majority of such voters have so petitioned, such township trustees shall continue annually to assess a tax, as herein provided, each year, unless a majority of such voters shall, after the first year, at any time remonstrate against the same.

Expenditure of tax.

SEC. 22. In case such tax be assessed, such trustees shall order the expenditure thereof in the improvement of the highways thereof, under such regulations as they may deem most expedient for the public interest, and for this purpose shall order the payment of such sum by the township treasurer to each supervisor of the township as the highways in their respective districts may require; but before paying any such sum to such supervisors, such treasurer shall take from him a bond, with penalty and surety to be by him approved, for the faithful performance of the duties of his office in the disposition of such funds, which bond such supervisor shall give to the treasurer, to be by him filed with the township clerk.

Work may be let to the lowest bidder.

SEC. 23. Such trustees may let out the same to the lowest responsible bidder, and for this purpose they may cause notices to be posted up in three of the most public places in the township, that proposals will be received under such regulations as they may prescribe, at a time and place to be by them desig-

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nated, for the repair of all the highways and bridges in such road district; and in all such cases such trustees shall adopt such regulations as to the extent of the repairs, terms of payment, superintendence of the work, and the time of the commencement and completion thereof, as they may deem proper.

Road districts.

SEC. 24. Such trustees shall divide their townships into such road districts as they may deem convenient; and in case they shall fail so to do, the board of commissioners of the county shall divide such township into such road districts as they may deem proper; and in case any such township shall not be organized under the provisions of the law providing for the electing of trustees of such township, all duties required to be performed by, and all the rights accruing to such trustees, shall be performed by, and accrue to the board of commissioners of the county.

Penalty for injuring drain &c. guide-posts and boards, obstructing highway &c.

SEC. 25. Any person who shall injure any drain, dam, embankment, ditch or other construction, made for the protection of any highway or bridge, or who shall willfully destroy any guide post, or deface any inscription or device thereon, or who shall unnecessarily and to the hindrance of passengers, obstruct any highway or bridge, and who shall, when driving any vehicle, fail to keep to the right when meeting another vehicle, so as to allow it to pass without injury, for every such offense, such person shall forfeit the sum of five dollars, to be recovered before a justice of the peace of the county, in the name of such trustees, by the supervisor of the district; and in case of such obstruction, for every day the same is continued, such sum shall be recovered; and in all such cases, such supervisor, within three days after receiving information of any such forfeiture, shall commence such suit, and the sum recovered thereon shall be paid to the treasurer of the township for the benefit of the highways of such district.

Penalty for neglect of supervisor.

SEC. 26. All such suits commenced by one supervisor, may be continued by his successor in office, and no costs shall be taxed against him, therein; and in case such supervisor shall fail to use due diligence in keeping the highways of his district in good repair, under the regulations herein prescribed, or who shall fail to call out the hands of his district to work on the highways thereof, the number of days herein prescribed, unless a tax has been assessed for the repair of such highways, or who shall fail to bring suit for any of the forfeitures herein provided, when required so to do by this act; or who shall fail to perform any other duty enjoined upon him by this act, for every such offence, he shall forfeit the sum of ten dollars, to be recovered before any justice of the county, in the name of the township trustees, by the treasurer of such township; and all sums so recovered shall be for the benefit of the district for which such supervisor was elected or appointed; and such treasurer shall bring such suit within three days after receiving any information of any such forfeiture.

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Successor in office to collect, &c.

SEC. 27. The successor in office of any supervisor shall collect and receive all delinquences, accruing under the term of his predecessor or predecessors, and all judgments that may have been rendered in his or their name, remaining uncollected; and shall hand over all books, papers and moneys in his hands to the township clerk on the Saturday before the first Monday in April, at the expiration of his term of office; also, all tools shall be delivered to his successor in office, when called for.

10,000 copies of this act, &c., to be printed for supervisors.

SEC. 28. It shall be the duty of the Secretary of State to cause ten thousand copies of this act, together with the acts concerning the laying out of highways, and the construction and repair of bridges, to be printed in pamphlet form, under one binding, and cause the same to be distributed with the general laws of this session to the several counties in this State, in such proportion as each county will be entitled to receive; one copy of which shall be by the county auditors of the respective counties delivered on demand to each supervisor of highways in such county.

Oaths.

SEC. 29. Every clerk of the board of township trustees in this State is hereby empowered to administer oaths in all cases touching, and necessary in the prosecution of the business of the township of which he is clerk.

An additional tax may be levied.

SEC. 30. The board of trustees may levy an additional tax for road purposes, in said township, not to exceed one and three-fourth cents on each and every acre of land lying and being within the limits of said township, subject to taxation, if a majority of the legal voters of said township there voting, shall vote at the April election in favor of said tax:

Proviso.

Provided however, That persons so assessed may work out the amount of said tax at the rate of seventy-five cents per day, under the direction of the supervisor, in the district in which it lies.

Money in county treasury belonging to road districts to be paid to township treasurer.

SEC. 31. All money in the treasury of any county belonging to a road district thereof, shall be paid over to the treasurer of the township in which such district is situate on the warrant of the proper auditor, and shall be applied to the benefit of such district; the money so paid to the township treasurer, shall be by him paid out on the order of the supervisor or supervisors of such township; all moneys and labor intended for the improvement of roads shall be expended thereon, on or before the 15th of September in each year.

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CHAPTER 103.

AN ACT providing for the election, and prescribing certain duties of County Surveyor.

[APPROVED JUNE 17, 1852.]

Election and term of office of surveyor.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That there shall hereafter be elected, at the general election in each county, by the qualified voters thereof, a county surveyor, who shall give bond in the sum of one thousand dollars, and shall continue in office from the first Monday in November thereafter, for the term of two years.

Surveyor to procure copy of field notes.

SEC. 2. It shall be the duty of such surveyor, whenever directed so to do by the board, to procure a copy of the original field notes of the townships in his county, have the same recorded, and hand them, as well as all other papers, maps, books, and charts belonging to his office, over to his successor.

Proceedings to establish corners, lines, &c., notice thereof, and compensation therefor.

SEC. 3. Whenever the owner of any land within this State, after having given ten days' notice to the owners of adjoining lands, if such owners reside in the county, and if not, by publication three weeks successively in a newspaper nearest to such land, shall desire to establish, re-locate, or perpetuate any corner thereto, or in the same section, or line thereof, such county surveyor shall proceed to make the required surveys and locations; and if a corner is to be perpetuated, shall deposit in the proper place a stone, or other durable material, with the letters and figures answering to such corner thereon; and shall also enter in his field notes one or more bearing trees, if there be such, the species and size, course and distance thereof, all of which proceedings shall be entered by him in a book to be kept for that purpose; the expense of which publication and survey shall be borne equally by all persons interested; and if any of the persons thus interested are non-residents, the surveyor shall hand over a certified statement of the amount due from them for such publication and survey, to the auditor of the county, who shall enter it upon his tax duplicate against such persons, and cause it to be collected in the same manner with the taxes assessed against such persons.

All the proprietors present, no notice necessary.

SEC. 4. Whenever all the proprietors of lands adjoining any corner, which any county surveyor may be required to establish or perpetuate, or any line which he may be required to view and establish, are present, and consenting, or in writing shall so consent, such notice shall not be necessary.

Deputies.

SEC. 5. Such surveyors may appoint deputies, and whenever the services of a surveyor are required in a case where he is interested, the board of commissioners shall appoint a deputy to act in such case.

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Deputies, chain-carriers, &c., to take an oath; deputy to return field-notes within 60 days.

SEC. 6. Deputies, chain carriers, flag bearers, or markers, shall take an oath, to be administered to them by such surveyor, or by any other officer authorized to administer oaths, to faithfully discharge their duties, a minute whereof he shall keep in a book provided for that purpose; and such deputies shall return all field notes by them taken within sixty days thereafter to such surveyor.

oaths.

SEC. 7. Such surveyor or his deputy shall have power to administer all oaths required in the discharge of his duties, for which he may receive the usual fees.

Evidence of survey, appeal therefrom, and proceedings thereon.

SEC. 8. The survey of such surveyor shall be *prima facie* evidence in favor of the corners so established, and the lines so run, but an appeal may be taken to the circuit court within three years, and such court may reverse such survey; and upon such appeal being prayed for by any person, such surveyor shall forthwith transmit the papers in his hands touching the same, and copies of the filed notes in the case complained of, without requiring an appeal bond, and such court, in the trial of such appeal, may receive evidence of other surveys of the same premises, made by the same or other persons, either before or since the one complained of, and if such court shall decide against such surveyor, it shall enter an order for a re-survey, and such new survey may be made by any other competent person whom the court may designate, from whose decision an appeal may be in like manner had.

Surveys to be made agreeably to U. S. surveys of public lands.

SEC. 9. All division lines which may be run to divide any of the lands sold by the United States, shall be made agreeably to the laws of the United States, directing the mode of surveying public lands.

May administer oaths to commissioners to assign dower, in partition to road viewers, &c.

SEC. 10. The several county Surveyors of this State shall have full power and authority to administer and certify any oath required to be taken by any commissioner for the assignment of dower, or the partition of real estate or by any commissioner or viewer, to view, mark, locate, or re-locate any public highways, and whenever any county surveyor shall be appointed any such commissioner, or viewer, for the purposes aforesaid, he shall not be required to take an additional oath; but the duties required of such commissioner or viewer shall be taken and construed to be a part of his official duties; and the official signature of such surveyor to any proceedings required of such commissioners or viewer, shall be sufficient on his part.

May take acknowledgments of conveyances.

SEC. 11. The several county surveyors shall be competent to take acknowledgments of deeds for the conveyance of real estate and to certify the same under their hand and seal.

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CHAPTER 104.

AN ACT to regulate the sale of the Swamp Lands donated by the United States to the State of Indiana, and to provide for the draining and reclaiming thereof, in accordance with the condition of said grant.

[APPROVED, MAY 29, 1852.]

County auditors and treasurers appointed agents to sell swamp lands.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the auditor and treasurer of each county in the State, be and are hereby appointed agents on the part of the State, to sell the swamp lands lying within the respective counties of which they are auditor and treasurer; and should either of said officers refuse to perform the duties required by this act, it shall be the duty of the Governor to appoint some suitable person or persons to act as such agents in accordance with the provisions of this act.

Treasurer's bond.

SEC. 2. It shall be the duty of each treasurer of the different counties in this State, in which any swamp lands may lie, to file in the auditor's office of his county a penal bond in the sum of ten thousand dollars, with five or more freeholders as sureties, to be approved by the board of commissioners of his county, conditioned for the faithful performance of his duties as such agent, and the payment of all moneys which shall come into his hands on account of the swamp lands, according to law.

Maps and plats.

SEC. 3. It shall be the duty of the Auditor of State as soon as possible after the State shall receive her patent from the United States for the swamp lands, to cause to be prepared maps or plats of all the swamp lands lying within the bounds of each county separately showing the township, range, section, and parts of sections, together with the numbers of each, in which said lands may lie, which maps or plats he shall forward to the different county auditors as soon as possible after the completion thereof.

Notice of sale.

SEC. 4. It shall be the duty of each county auditor of this State, immediately after receiving the map or plat of the swamp lands lying within the bounds of his county, to give sixty days notice by notice published in a newspaper of general circulation, printed in Indianapolis, and [in] a newspaper published in his county, if there be one, if not, in the newspaper published nearest to his county in this State, and also to cause printed handbills of the time, place, and terms of the sale of said swamp lands, to be circulated in each and every county adjoining the county of which he is auditor.

Place and manner of sale.

SEC. 5. The place of sale for the swamp lands, shall be at the court house in each county of this State in which the said lands may be situated, and it shall be the duty of the county auditor, to attend at the court house of his county at the time mentioned in the notice of the sale of said swamp

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lands, and offer for sale at public auction in legal subdivisions, and as near as practicable in half quarter sections, all the swamp lands lying within his county, and for that purpose shall continue the sale from day to day until all of the said land shall have been offered for sale.

Highest bidder.

SEC. 6. Each tract of land so offered for sale shall be struck off to the highest bidder therefor, for any sum not less than one dollar and twenty-five cents for each acre in the tract.

Certificate of purchase.

SEC. 7. The county auditor shall, as soon as convenient, within twenty-four hours after the sale of any tract of tracts of said land, deliver to the purchaser thereof a brief certificate stating therein the name of the purchaser, the tract or tracts purchased by him, the number of acres contained in said tract or tracts, and the price per acre at which the same was sold, signed by the auditor officially.

Certificate to be presented to treasurer.

SEC. 8. The purchaser of any tract or tracts of land sold by the auditor as aforesaid, shall immediately present the certificate given to him by the auditor, as prescribed in the preceding section, to the county treasurer, and pay to said treasurer the whole amount of the purchase money for the tract or tracts in said certificate specified.

Treasurer's receipt.

SEC. 9. On the payment by the purchaser of any tract or tracts of land of the amount of money due therefor it shall be the duty of the treasurer to give to the purchaser thereof a duplicate receipt, specifying therein the date of the receipt of the money, the name of the purchaser, the amount paid for each acre, the number of acres in the tract or tracts, the county, congressional township, range and section in which the tract or tracts are situated, which receipt shall be in the following form substantially: "No. —— Treasurer's office of ——— county, in the State of Indiana: Received of ——— of ——— county in the State of ——— the sum of ——— dollars and —— cents, being the purchase money for ——— section No. —— in township No. ——— of range No. ——— containing ——— acres and ——— hundredths of an acre, which entitles the said ——— to a deed from the State of Indiana for said lands on presentation of this certificate to the said treasurer."

Date and registry of certificate.

SEC. 10. Said certificates shall bear date on the day on which it is issued, and shall be registered by the treasurer in a book provided for that purpose, by entering in said book a correct copy of said certificate.

Evidence and loss of certificate.

SEC. 11. Said certificate of entry shall not be assignable, but shall be evidence of title to the land mentioned therein, in the persons in whose names they shall issue; and if by accident the certificate shall be lost or destroyed, the person or his heirs, in whose name the same shall have been issued, shall be entitled to receive from the treasurer a second duplicate or certificate of purchase for the tract or tracts of land in the original certificate mentioned, on making and

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filing with the treasurer an affidavit of the loss or destruction of the original certificate of purchase, which second certificate shall be a true copy of the copy of the original one as recorded in the books of his office, and by the treasurer certified to be such.

Copy of record of certificates to be forwarded to Auditor of State.

SEC. 12. It shall be the duty of the treasurer of each county, at the end of every ninety days, to make out and forward to the Auditor of State, a full and complete copy of the record of certificates by him issued, to purchasers within the preceding ninety days which shall be certified by him to be a full, true and perfect transcript of the record of certificates by him issued to purchasers within the preceding ninety days, and the same shall be certified by the auditor of the county, under the seal of the board of commissioners of said county, to be a correct and full statement of all the entries of land made in his office within the preceding ninety days.

County auditor to keep an entry of sales.

SEC. 13. It shall be the duty of the county auditors of each county in which any swamp lands may be situated, to enter in a book by him provided for that purpose, a brief description of each tract of land purchased, the number of acres contained therein, the price paid for each acre, the name of the purchaser or purchasers, and the date of the purchase.

Auditor of State to prepare deeds.

SEC. 14. It shall be the duty of the Auditor of State, as soon as he shall receive the returns from the treasurers of the lands sold within the preceding ninety days within their counties, to prepare a deed of conveyance by way of warrantee deed, in the names of the purchasers for the lands purchased, which deed of conveyance shall be signed by the Governor of the State of Indiana, officially, and attested by the Secretary of State of Indiana, and the seal of the State affixed thereto.

Deeds to be forwarded to county treasurer.

SEC. 15. It shall be the duty of the Secretary of State, so soon as the said deeds shall be executed, to forward the same to the treasurer of the county in which the lands mentioned in the deed shall be situated; and it shall be the duty of the treasurer to deliver the same to the purchaser named therein on the presentation to him of the original or certified copy of the original certificate of purchase for the lands mentioned therein.

Money to be deposited with the Treasurer of State.

SEC. 16. The Auditor of State shall, as often as once in every ninety days, and oftener, if he deems the interest of the State requires it, order the county treasurers to deposit the amount of moneys by them received for swamp lands, in the office of the Treasurer of the State of Indiana, and take the treasurer's receipt therefor.

Treasurer's receipt to be filed in the office of auditor of State.

SEC. 17. It shall be the duty of the treasurer of the county depositing money with the Treasurer of State, to immediately file in the office of the Auditor of State, the receipt of the Treasurer of State, for the amount of money paid to him, and the Auditor of State shall give to the treasurer filing such

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receipt, a receipt therefor, stating therein the amount of money mentioned in said receipt, which said amount shall be charged by the Auditor of State to the Treasurer of State, in a separate account by him kept for that purpose.

Account of moneys.

SEC. 18. The Treasurer of State shall keep a separate account of all moneys by him received from the treasurers of the different counties, for the sale of swamp lands.

State Auditor's account.

SEC. 19. The Auditor of State shall open and keep an account current with the treasurers of the different counties of the amount of money by them received for the sale of swamp lands within their respective counties.

Commissioner of swamp lands

SEC. 20. It shall be the duty of the Governor to appoint some suitable and competent person in each county in this State in which any swamp lands may be situated, as commissioner of swamp lands in said county, whose duty it shall be to employ some suitable and practical engineer, for the purpose of surveying and ascertaining the best, cheapest, and most expeditious method of draining and reclaiming the swamp lands lying within the bounds of his county.

Duty of commissioner and engineer.

SEC. 21. It shall be the duty of said commissioner and engineer to proceed and examine the different tracts of swamp lands lying within the bounds of the county, and make report as soon as possible, whether said lands, or any part thereof, are susceptible of being drained and reclaimed; and if so, in what manner the same can be done, together with the estimated expense or cost thereof, the manner in which the draining shall be done, as to the length, breadth and depth of the ditches, the heighth, width and length of dykes or levees necessary to accomplish the same, the number of acres that will be drained, or partially drained, or prevented from being overflowed thereby, and whether such draining will be permanent, and increase the value of the real estate generally within the county, as well as of the lands drained.

Commissioners report, where filed.

SEC. 22. One copy of said report shall be filed with the county auditor, and one copy thereof shall be forwarded to the Auditor of State, and by him filed in his office.

Notice of the buildings.

SEC. 23. It shall be the duty of the said commissioner and engineer to prepare plans and specifications of the work to be done at each drain, and give thirty days' notice of the time and place when and where the work will be let, which notice shall be published in a newspaper published in the county, if there be any, otherwise in a newspaper published nearest thereto, in this State, and also by printed bandbills posted up in the county, and circulated in the adjoining counties.

Lettings.

SEC. 24. The said commissioner and engineer shall attend at the time and place of letting the work advertised, and let the work to the lowest responsible bidder therefor: *Provided*, That the same shall not be let at a price exceeding the estimated cost thereof.

No work to be let, unless, &c.

SEC. 25. No work shall be let or advertised to be let, unless there shall have been swamp lands sold previously

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thereto, within the county, of sufficient amount to pay the cost of the work advertised to be let.

To what fund to be appropriated.

SEC. 26. The amount of money paid into the office of the Treasurer of State, from the different counties, for the sale of swamp lands, shall constitute a special fund for the following purposes, and for no other, to-wit:

First. To pay the expenses of the selection thereof under the act of Congress donating them, as ascertained by law.

Second. To pay the expenses of preparing maps and plats thereof, the expense of the sale thereof, and all other expenses necessarily incurred in the sale thereof.

Third. To pay the commissioners and engineers for their services, as hereinafter provided.

Fourth. To pay for the expense of reclaiming by ditching, dyking, or [the use of] other necessary and proper means, [in so reclaiming] the said swamp lands.

Compensation of county auditors and treasurers.

SEC. 27. The auditors and treasurers of the different counties, who shall act as agents for the sale of swamp lands within their respective counties, shall each receive, for their services as such agents, the sum of one dollar on each one hundred dollars received within their counties, for the sale of swamp lands therein.

Compensation of commissioners and engineers.

SEC. 28. The commissioners appointed by the Governor, in the different counties, shall each receive the sum of two dollars for each and every day they may be necessarily employed in and about the duties of their office as herein provided, and the engineers by them respectively employed shall each receive a sum not exceeding three dollars for each and every day by them necessarily employed in their duties as herein provided.

Balance to become part of school fund.

SEC. 29. The fund remaining in the treasury of the State after the expenses are paid as in the three preceding sections specified and provided, shall constitute a portion of and belong to the common school fund of the State as in the constitution provided, and shall be disposed of by law for the use of common schools in accordance with the constitution of the State.

Oath of auditor and treasurer.

SEC. 30. It shall be the duty of the auditor and treasurer of each county in this State, before they shall act as agents for the sale of swamp lands within their counties, to take an oath to support the constitution of the United States and of the State of Indiana, and to faithfully, honestly and impartially, perform their duties as such agents according to law, to the best of their ability.

Before whom taken, and where filed.

SEC. 31. The oath prescribed in the preceding section shall be taken before some justice of the peace resident within the county, or before the clerk of the circuit court for the county, who is hereby authorized to administer the oath for that purpose, and filed in the office of the clerk of the circuit court, and by him filed in his office and recorded in the order book of the circuit court for the county.

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Oath of commissioner.

SEC. 32. It shall be the duty of each commissioner appointed by the Governor, before he enters on the duties of his office, to also take and file an oath in the clerk's office of the county, as in the two preceding sections specified, and it shall be the duty of the clerk to file and record the same as in the said sections specified.

Fees may be retained.

SEC. 33. It shall and may be lawful for the Treasurer of State to allow the different treasurers, when they pay over to him any moneys by them received for swamp lands, to retain the fees due to the auditor and to himself therefor, and also for the necessary expenses of advertising the sale of swamp lands and the purchase of the necessary books for the auditor and for himself by this act required for the performance of their duties.

When certificate of work to be given contractor.

SEC. 34. Whenever any money shall be due to any contractor for work done by him on any contract for the draining of the swamp lands, the commissioner of the county in which the work shall have been performed, shall give the contractor a certificate, certifying therein the amount of money that may be due, and that the person named therein is entitled to receive the same from the swamp land fund, for services performed in the draining of said lands.

Order on treasurer.

SEC. 35. The Auditor of State, on the presentation to him of said certificate, shall give to the person named therein an order on the Treasurer of State for the amount therein named, payable out of the swamp land fund.

Commissioners' and engineers' account for services.

SEC. 36. The commissioner, for his own services and for the services of the engineer employed by him, shall present to the Auditor of State the account of the number of days by them occupied in the duties of their office, specifying therein the number of days by each served, which account shall be verified by the oath of each of them, appended thereto, to be true and correct, and on the filing said account with the Auditor of State, it shall be his duty to give to said commissioner and engineer an order on the Treasurer of State for the amount due to each, payable out of the swamp land fund.

Unsold land subject to entry.

SEC. 37. The land remaining unsold after the same shall have been offered at public sale, shall be subject to entry at the sum of one dollar and twenty-five cents the acre, by any person applying to enter the same, and for that purpose it shall be the duty of the auditor and treasurer of each county to attend at their respective offices from day to day until the same shall all have been entered.

When another's land may be entered to construct ditches, &c.

SEC. 38. In all cases where it shall be necessary in ditching, dyking, or leveeing any of the swamp lands for the purpose of reclaiming them, to cross the lands owned by any person or persons with the ditches, dykes, or levees, it shall and may be lawful for the commissioner to enter on the land of such person or persons, and thereon construct the necessary ditches, dykes, or levees: *Provided*, That before any

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such work on the lands of any such person, shall be commenced, it shall be the duty of the commissioner to obtain from the owner, or owners of lands a release, to the State of all damages that may accrue to such person in consequence of said improvement, and for that purpose the said commissioner is hereby authorized to pay to such persons their reasonable damages therefor, or receive contributions, and collect the same according to contract to be entered into between the parties in the premises by giving his certificate therefor, as in other cases provided in this act, which certificates shall be paid by the Auditor and Treasurer of State, the same as in other cases provided in this act for the payment of moneys from the swamp land fund.

Ditches, &c., running into more than one county.

SEC. 39. Whenever it shall be necessary or convenient to continue the ditches, dykes, or levees for the purpose of draining the swamp lands from one county into or through any part of an adjoining county, it shall be the duty of the commissioner of the county wishing to so continue the work to notify the commissioner of the county into which it may be necessary or convenient to so continue the work, whose duty it shall be to attend to the construction thereof, in such manner as to carry into effect the work or works connected therewith in the adjoining county.

Preemption claims.

SEC. 40. Each and every person residing upon any of the swamp lands in any county of this State, and having improvements thereon, or having improvements thereon only, on the first day of January, eighteen hundred and fifty-two, shall be entitled to enter the same at private entry for the sum of one dollar and twenty-five cents the acre: *Provided*, that before any person shall be entitled to enter the same as in this section provided, he shall prove to the satisfaction of the county auditor, by the affidavit of at least two disinterested witnesses, that he resided and had improvements thereon, or had improvements thereon only, previous to the first day of January, eighteen hundred and fifty-two; *And provided further*, that the said application to enter the land claimed under this section, shall be made and the money paid therefor, before the same shall be offered at public sale.

Proviso.

Trespass on lands.

SEC. 41. It shall be the duty of the county treasurer of each county, to prosecute, in the name of the State of Indiana, any person or persons who shall commit a trespass on any of the swamp lands, by cutting down any tree or trees growing thereon, or removing therefrom any timber, stone or other material to the injury thereof.

Penalty.

SEC. 42. Any person trespassing upon any of the swamp lands, contrary to the provisions of section forty-one of this act, shall be adjudged to pay five times the value thereof, and suit may be brought before any justice of the peace of the proper county, by action of debt for the recovery thereof.

Who to take charge of lands.

SEC. 43. It shall be the especial duty of the treasurers, in their different counties, to take charge of and protect the

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swamp lands lying within their respective counties, from trespasses to the injury thereof.

Continuing ditches, &c., into a county where there are no swamp lands.

SEC. 44. Whenever it may be necessary to continue any ditch, dyke, drain or levee into or through the bounds of any county in which no swamp lands may be situated, the commissioner of the county wishing to so continue the work, shall be and he is hereby authorized and required to enter into and upon the lands lying within such county, and thereupon construct such ditches, dykes, drains or levees as may be necessary.

Notice to owners of land,

SEC. 45. It shall be the duty of all commissioners to give previous notice, to any and all persons owning lands, of the necessity of entering upon their lands to construct the necessary work thereon, which notice shall be in writing and served personally, if they are residents of the county, and if not residents of the county, then by public notice in a newspaper, printed in the county, if there be one, otherwise in the newspaper [printed and] published nearest thereto.

Orders payable out of fund.

SEC. 46. It shall, and may be lawful for the treasurer to receive, in payment for lands entered, or to pay the money therefor, any order issued by the Auditor of State to any person, payable out of the swamp land funds, which order or orders shall be received of the county treasurers by the Treasurer of State, and receipted for as cash.

When money has been paid to U. S. land offices.

SEC. 47. In all cases where any person or persons may have deposited money with any of the registers and receivers of any of the land offices of the United States within this State, for the entry of any of the swamp lands, under the law entitled an act to provide for defraying the expense of selecting the overflowed, and swamp lands in the State of Indiana, and for other purposes, approved February 14th, 1851, it shall and may be lawful for such persons to pay the amount thereof to the treasurers of the counties in which the lands may be situated, and receive a duplicate or certificate therefor; and for that purpose, it shall be the duty of the county auditors to allow all such persons to enter all such lands as they may have deposited the money for, under said recited act, at any time previous to the offer of the same at public sale, and in all cases where two persons shall have deposited the money for the same tract, it shall be the duty of the county auditor to offer the same to the highest bidder therefor: *And provided*, that the applicant for the entry of lands under this section shall, by his own oath, and by the oath of the receiver of the land office where the money was deposited, prove to the auditor that the lands by him then applied to be entered, are the lands for which the money was deposited with the receiver, and that the money was actually deposited with the receiver under the said act of 1851, for the purpose of entering the lands then applied to be entered, and for no other: *Provided, further*, that in all cases contemplated in this section, if the holders of the certificate,

Proviso.

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or certificates of entry at any land office, shall present to the auditor and treasurer of the county in which the land shall be situated, a certificate signed by the Auditor of State, certifying therein, that the money deposited with the receiver has been paid into the State Treasury, in payment of the land mentioned in said certificate, it shall be their duty to enter the same on their books, as sold to said holder, and certificates of purchase to issue as if the money had been paid into the office of the county treasurer, and in all such cases no other evidence shall be required.

Expenses to be certified to auditor of State.

SEC. 48. All expenses incurred in the making of the necessary surveys, by hiring the necessary assistance, and the expense of advertising the work to be let, shall be certified to the Auditor of State and sworn to by the commissioners, [they] certifying the same to be true and correct; whereupon the Auditor of State shall draw his order upon the Treasurer of State for the amount therein certified to be due, payable out of the swamp land fund.

To keep accounts with county.

SEC. 49. The auditor and treasurer shall each charge to the account of each county by them kept, the amount paid out on the orders of the commissioners thereof, for all the expenses incurred in said county, in and about the draining of the swamp lands therein.

No money to be paid out of the general fund of the State.

SEC. 50. No money of any amount whatever shall ever be paid out of the general fund of the State, or any other fund whatever, excepting the swamp land fund, as provided in this act, for the purpose of draining or reclaiming any of the swamp lands, or for any expenses incident thereto.

Removal of commissioners.

SEC. 51. The Governor shall have power, and he is hereby authorized, to remove any of the swamp land commissioners, and appoint others in their place, whenever he shall be of opinion the interest of the State requires it.

Order on treasurer.

SEC. 52. The Auditor of State shall draw his order on the Treasurer of State, requiring him to place to the credit of the State, out of the first moneys received into the treasury for swamp lands, the amount paid out of the State treasury for the selection of swamp lands, and all other expenses incurred by the State in the disposal thereof.

Repealing clause.

SEC. 53. All laws conflicting with the provisions of this act, and all laws heretofore passed authorizing any disposition or sale of the swamp lands, be and the same are hereby repealed.

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CHAPTER 105.

AN ACT supplemental to an act entitled "An act to regulate the sale of the Swamp Lands donated by the United States to the State of Indiana, and to provide for the draining and reclaiming thereof, in accordance with the condition of said grant."

[APPROVED JUNE 14, 1852.]

Auditor's circular. Statement of register and receiver.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That it shall be the duty of the Auditor of State to issue his circular letter to all the registers and receivers of all the land offices of the United States in this State, requesting them severally to forward to his office and to the State Treasurer, a certified statement of all the swamp lands for which applications have been made for entry at their respective offices, accompanied with deposits of money for the payment of the same, specifying in such statement the name of the person or persons making such deposit, when made, and the description and quantity of land so sought to be entered.

Receivers to pay money into State treasury.

SEC. 2. That the receivers of said land offices be at the same time requested to pay over to the State treasury all moneys they may have received as aforesaid, and the State Treasurer is hereby required to receive the same.

Certificate of purchase.

SEC. 3. That it shall be the duty of the Auditor of State after such money is paid into the treasury, and the statement required by the first section of this act is filed in his office, to issue his certificate to the person or persons whose deposits have been paid into the treasury as aforesaid, certifying the description and quantity of the land so purchased, the name or names of the persons so purchasing, and the amount of money paid therefor.

Patents.

SEC. 4. The patents required in this act, and in the act to which this is supplementary, shall be executed by the Governor, and issued and countersigned by the Secretary of State, and attested by the seal of said State upon the certificate of the Auditor of State, and shall also be recorded by said Secretary of State in books to be kept in his office; and for the services rendered by them respectively in issuing said patents, the Auditor and Secretary of State shall each be entitled to the sum of fifty cents for each patent issued, payable out of the fund arising from the sale of said lands.

Allowance to registers and receivers.

SEC. 5. That the registers and receivers who shall comply with this act, shall each be entitled for their services to the sum of one per cent. on the sums of money received by them on deposit as aforesaid, which shall be paid them out of such money thus deposited, by the Treasurer of State, upon the warrant of the State Auditor.

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CHAPTER 106.

AN ACT In relation to the Taxation of Lands in Towns and Cities.

[APPROVED JUNE 18, 1852.]

Land within the limits of a town or city, used for farming, shall not be taxed.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any lands embraced within the corporate limits of any town or city, which are used exclusively for farming purposes, shall not be liable to any tax or assessment for town or city purposes: *Provided, however*, that the provisions of this act shall not apply to parcels of land applied to the purposes aforesaid, containing less than twenty acres, nor to any in or out lots laid off and lying within the corporate limits of any town or city. This act shall not apply to any town or city containing more than five thousand inhabitants.

Proviso.

CHAPTER 107.

AN ACT to regulate Electric Telegraph Companies.

[APPROVED MAY 13, 1852.]

Dispatches to be sent in turn, with impartiality.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That every electric telegraph company, with a line of wires wholly or partly in this State, and engaged in telegraphing for the public, shall, during the usual office hours, receive dispatches, whether from other telegraphic lines or from individuals; and, on payment or tender of the usual charge, according to the regulations of such company, shall transmit the same with impartiality and good faith, and in the order of time in which they are received, under penalty, in case of failure to transmit, or if postponed out of such order, of one hundred dollars, to be recovered by the person whose dispatch is neglected or postponed: *Provided, however*, that arrangement may be made with the publishers of newspapers for the transmission of intelligence of general and public interest, out of its order, and that communications for and from offices of justice shall take precedence of all others.

Penalty for failure.

Proviso.

Tel. Co. liable for special damages for negligence, or for disclosure.

SEC. 2. Telegraph companies shall be liable for special damages occasioned by failure or negligence of their operators or servants, in receiving, copying, transmitting or delivering dispatches; or for the disclosure of the contents of any private dispatch to any person other than to him to whom it was addressed or his agent.

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Dispatches to be delivered.

SEC. 3. Such companies shall deliver all dispatches, by a messenger, to the persons to whom the same are addressed, or to their agents, on payment of any charges due for the same: *Provided*, Such persons or agents reside within one mile of the telegraphic station, or within the city or town in which such station is.

Railroad Co. may become stockholder, or may construct, &c.

SEC. 4. A railroad company may become a stockholder in a telegraph company, or may construct a telegraph to connect two or more points on their railroad. And if such railroad company entirely own such telegraph line, they shall not be bound to telegraph for the public, unless they undertake to do so.

Contracts by telegraph to be valid.

SEC. 5. Contracts made by telegraph, between two or more persons, shall be considered as contracts in writing.

CHAPTER 108.

AN ACT for the incorporation of Towns, defining their powers, providing for the election of the officers thereof, and declaring their duties.

[APPROVED JUNE 11, 1852.]

Survey.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That persons intending to make application for the incorporation of a town, as hereinafter provided, shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such town; such survey shall be made by a practical surveyor, and show the courses and distances of the boundaries thereof, and the quantity of land contained therein, the accuracy of which survey and map shall be verified by the affidavit of such surveyor, written thereon or annexed thereto.

Census.

SEC. 2. Such persons shall cause an accurate census to be taken of the resident population of such territory, as it may be, on some day not more than thirty days previous to the time of presenting such application to the board of county commissioners, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory, on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same.

Survey and census open to examination.

SEC. 3. Such survey, map and census, when completed and verified as aforesaid, shall be left at some convenient place within said territory for examination by those having interest in such application, for a period of not less than four weeks.

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Application, how made.

SEC. 4. Such application shall be by petition, subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and said petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained, according to said census taken; and the said petition shall have attached thereto, or written thereupon, affidavits verifying the facts alleged therein; and it shall be presented at the time indicated in the notice of such application, or as soon thereafter as the board can receive and consider the same.

Duty of commissioners.

SEC. 5. The board of county commissioners, in hearing such application, shall first require proof, either by affidavit or by oral examination of witnesses before them, that the said survey, map and census were subject to examination in the manner and for the period required by section three of this act; and if said board be satisfied that the requirements of this act have been fully complied with, they shall then make an order, declaring that such territory shall, with the assent of the qualified voters thereof, as hereinafter provided, be an incorporated town, by the name specified in the application aforesaid, which name shall differ from that of every other town in this State; and they shall also include in such order a notice for a meeting of the qualified voters resident in said territory, at a convenient place therein, to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated town.

Notice of meeting.

SEC. 6. The board shall cause ten days' notice of such meeting, by publication in a newspaper, if one be printed in such territory, and by posting up copies of said notice, not less than ten in number, at the most public places in said proposed incorporated town.

Polls.

SEC. 7. At the meeting of the qualified voters, as herein provided, polls shall be opened at nine o'clock in the forenoon of such day, and shall be kept open until four o'clock in the afternoon, when they shall be closed.

Inspectors.

SEC. 8. The voters at such meeting shall first proceed to the election of three inspectors, who, after being duly chosen and qualified, and elected one of their number clerk, shall without delay proclaim to the meeting that the poll is now opened, and that they are ready to receive the ballots of the voters.

Election.

SEC. 9. The qualified voters of said territory shall vote by ballot, having thereon the word "yes," or the word "no;" and if a majority of the ballots given at such meeting shall have thereon the word "no," the voters of such territory shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto; but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated town, to have continuance there-

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after by the name and style specified in the order made by the board of county commissioners, as hereinbefore provided; and the inspectors of such meeting shall make a statement showing the whole number of ballots given at such meeting, the number having the word "yes" thereon, and the number having the word "no" thereon, which statement shall be verified by the affidavit of such inspectors, and shall be returned to such board of commissioners, at their next session, who, if satisfied of the legality of such election, shall make an order declaring that said town has been incorporated by the name adopted, which order shall be conclusive of such incorporation, in all suits by or against such corporation; and the existence of said corporation, by the name and style aforesaid, shall thereafter be judicially taken notice of in all courts and places in this State, without specially pleading or alleging the same.

Districting.

SEC. 10. Such inspectors when they shall have returned the statement as aforesaid, shall next proceed to divide said town into not less than five nor more than seven districts, having due regard to the equitable apportionment of a population among the same, and the convenience and contiguity of such district.

Notice of election of officers.

SEC. 11. They shall also give ten days' notice by publication in a newspaper if one be printed within such town, or if there be no newspaper, then by posting such notices in five public places therein, of an election to be held in such town, for the purpose of electing officers thereof; naming the place therein, and the day upon which the same shall be had; but such day named shall be within twenty days from the posting of such notices. Every subsequent notice of a corporation election shall be given in like manner by the clerk of said town.

Annual election.

SEC. 12. An election for officers of said town, after the first election, shall be held annually on the first Monday in May of each year, and at every such election the preceding board of trustees, or any three of them, shall act as the inspectors thereof.

Polls, when opened and closed.

SEC. 13. At all elections in said town, the polls shall be open at nine o'clock in the forenoon, and shall not be finally closed until four o'clock in the afternoon of said day.

Duty of inspectors.

SEC. 14. Such inspectors shall preside at such first election, and be the inspectors thereof, and, in the receiving and canvassing of votes, shall be governed by the laws then existing, so far as they are applicable, for the election of township officers.

Election of trustees, clerk, &c.

SEC. 15. There shall be elected at the first, and at every subsequent election, one trustee from each district in said town, and also a clerk, assessor, treasurer, and marshal, who shall respectively hold their offices until the first Monday in May next following, or [until] their successors are elected and qualified: *Provided*, that nothing herein contained shall

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prevent the respective offices of clerk, treasurer, assessor and marshal from being held by one and the same person.

Same. SEC. 16. The persons having the greatest number of votes shall be declared elected as such trustees, and the persons who received the greatest number of votes respectively for clerk, marshal, assessor, and treasurer, as designated by the ballot for such office, shall be declared so elected; and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected, and it shall be the further duty of such inspectors to make a certified statement over their own signatures, of the persons elected to fill the several offices in said town, and file the same with the clerk of the circuit court, in the county thereof within ten days from the day of such election, and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with.

Duty of county clerk. SEC. 17. It shall be the duty of the clerk of the proper county to make a record of such certified statement, for which service there shall be paid the same fee as is allowed clerks for similar services in other cases.

Vacancies, how filled. SEC. 18. A vacancy occurring in the board of trustees, or in any corporation office, shall be filled by appointment, at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district, if a trustee [be appointed] in which the vacancy has occurred, and shall in no case extend beyond the annual election provided for in this act.

Election of president; oath of office. SEC. 19. The board of trustees chosen as aforesaid, shall elect a president from their own body, and such president, trustees, and all other officers elect, shall, within five days after such election, take and subscribe, before some person authorized to administer the same, the usual oath or affirmation for the faithful performance of the duties of their respective offices.

Corporate powers. SEC. 20. The president and trustees of such town, and their successors in office, shall constitute a body politic and corporate, by the name of the town of ———, and shall be capable in law to prosecute and defend suits to which they are a party.

Special meetings of voters, how called. SEC. 21. Special meetings of the qualified voters may be called by the clerk, by order of the trustees of said town, by giving ten days' notice thereof, in a newspaper, if any be printed in such town; otherwise, by posting up such notices in five public places therein, and such notice shall state the objects for which such meeting is called.

Powers of trustees. SEC. 22. The board of trustees shall have the following powers, viz:

First. To have a common seal, and alter the same.

Second. To purchase, hold or convey any estate, real or personal, for the use of the corporation, so far as such pur-

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chase may be necessary to carry out the [objects] contemplated by this act.

Third. To organize fire companies, hook and ladder companies; to regulate their government, and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire-buckets, which are hereby declared to be appurtenances to the real estate, and exempt from execution, seizure or sale; and if the owner shall refuse to procure suitable ladders or fire-buckets after reasonable notice, the trustees may procure and deliver the same to him, and in default of payment therefor, may recover of said owner the value of such ladder or fire-buckets, by suit before any justice of the peace in the proper township, and costs accrued thereby; to regulate the storage of gun-powder, and other dangerous materials; to direct the construction of a place for the safe deposit of ashes; and may under an order by them entered upon the proper book of the board, visit, or appoint one or more fire-wardens to visit and examine at all reasonable hours, dwelling houses, lots, yards, enclosures and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such danger; to regulate the manner of putting up stoves and stove pipes; to prevent out-fires and the use of fire-works, and the discharge of fire-arms within the limits of said corporation, or such parts thereof as they may think proper; to compel the inhabitants of such town to aid in the extinguishment of fire, and prevent its communication to other buildings, under such penalties as are in this act provided; to construct and preserve reservoirs, wells, pumps, and other water works, and to regulate the use thereof, and generally to establish other measures of prudence for the prevention or extinguishment of fires, as they shall deem proper.

Fourth. To declare what shall constitute a nuisance and to prevent, abate and remove the same, and take such other measures for the preservation of the public health, as they shall deem necessary,

Fifth. To restrain from running at large cattle, sheep, swine, or other animals.

Sixth. To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame; and to authorize the seizure and destruction of gambling apparatus.

Seventh. To license, regulate or restrain auction establishments, travelling peddlers and public exhibitions within the corporation.

Eighth. To establish and regulate markets, and build market houses, and direct the location of slaughter houses.

Ninth. To lay out, open, grade and otherwise improve

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the streets, alleys, sewers, side-walks, and crossings, and keep them in repair, and to vacate the same.

Tenth. To appoint street commissioners, and also fire wardens, not exceeding three.

Eleventh. To prohibit incumbrance of the side-walks of said town, and riding or driving thereon except to cross the same.

Twelfth. To insure the public property of such town.

Thirteenth. To purchase, lay out, and regulate cemeteries.

Fourteenth. To plant trees upon public grounds, and along the streets of such town, and provide for their culture and preservation, and to enclose any public square or other public grounds within said corporation.

Fifteenth. To levy and collect annual taxes, not exceeding fifty cents on the hundred dollars' valuation, and twenty-five cents poll tax, on all property subject by law to taxation.

Sixteenth. To make and establish such by-laws, ordinances and regulations, not repugnant to the laws of this State, as may be necessary to carry into effect the provisions of this act, and to repeal, alter or amend the same as they shall seem to require; but every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in five public places, at least ten days before the same shall take effect.

They may enact fines, &c.

SEC. 23. Such board of trustees shall have power to enact fines, penalties and forfeitures for violations of this act, or of any by-law, or ordinance by them established, not exceeding ten dollars for any one offense, which may be recovered by action in the name of the corporation; but such board may remit the whole or any part of the fine, penalty or forfeiture: *Provided*, that the fine assessed for the violation of any ordinance requiring a license, shall not be less than the amount required to be paid for such license, although it may exceed the sum of ten dollars.

Proviso.

Moneys, how appropriated.

SEC. 24. All moneys, however derived, belonging to such corporation, shall only be appropriated for such objects, and defraying such expenses as accrue, or necessarily arise in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect entered upon a proper book to be kept for that purpose by such board.

Claims; how allowed.

SEC. 25. No account or claim against said town, shall be audited or allowed by the board of trustees, unless it be made out fully and itemized; and every such account audited shall be numbered from one upwards, in the order they were presented, and a memorandum of the same entered upon a book to be kept exclusively for that purpose.

Same.

SEC. 26. No account or claim shall be paid unless audited and allowed by the board as aforesaid; and no moneys shall be drawn from the treasury, except upon a warrant from the

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treasurer, signed by the president of said town, and attested by the clerk thereof.

When to have power to contract loan.

SEC. 27. No incorporated town under this act shall have power to borrow money or incur any debt or liability, unless the citizen owners of five-eighths of the taxable property of such town, as evidenced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan; and such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same; and for any debt created thereby, the trustees shall add to the tax duplicate of each year successively a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the hundred dollars to create a sinking fund for the liquidation of the principal thereof.

Official bonds.

SEC. 28. The clerk, assessor, treasurer, and marshal, shall, within ten days from their election or appointment, each and severally give bonds, payable to the State of Indiana, with freehold sureties, to such an amount as the board of trustees shall direct, but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year.

Officers to deliver books, &c. to successors.

SEC. 29. All books, vouchers, moneys, or other property belonging to the corporation, and in charge or possession of any officer of the same, shall be delivered to his successor when qualified.

Tax, when determined.

SEC. 30. The board of trustees shall, before the third Tuesday in May of each year, determine the amount of general tax for the current year.

Duty of assessor.

SEC. 31. The assessor shall assess all property liable to taxation in such town, under such rules and regulations as the board may prescribe, and shall make return of his assessment roll to such board on or before the second Tuesday in June of each year.

Notice of assessor's return.

SEC. 32. The trustees shall cause the clerk of said corporation to put up notices in three or more public places in said town, stating that the assessment roll is returned and open for inspection, and that on a day and at a place to be specified in said notice, the trustees will hear and decide all complaints of, and appeals from, the acts of said assessor.

Levy of tax.

SEC. 33. When the assessment roll shall have been corrected and completed, the trustees shall levy a tax upon the taxable property of said town to such an amount as they may deem necessary, and shall set opposite the name of each person taxed a description and valuation of the property charged therewith, and the amount of tax assessed against such person; and when such tax list shall have been made, they shall cause a copy thereof, with a warrant annexed, to be delivered to the marshal of such town. The original assessment roll and tax list shall be deposited with the treasurer of such town, who is hereby charged with the safe custody of the same.

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Warrant for collection.

SEC. 34. Such warrant shall be under the seal of the corporation, signed by the president and trustees, or a majority of them, and attested by the clerk, and shall command the marshal to collect the taxes specified in his duplicate within ninety days, and pay over the same, and make return of said warrant to the treasurer of said town. Such trustees may renew such warrant for any period not exceeding thirty days.

Power and duty of marshal in collecting taxes.

SEC. 35. The marshal shall collect the taxes on said duplicate when so required, and shall have the same power to enforce collections, and shall be governed by the same rules and regulations, as county treasurers and county auditors, and shall have authority in like manner, to collect by distress and sale, and to make conveyances and certificates of real estate sold by virtue of such sale, which sale, if at a county seat, shall be at the door of the court house, or place of holding courts, and if not at the county seat, it shall be held at the door of the town hall, or place of meeting of the board of trustees, and the clerk of said board shall perform the like duties, at said sale, as are required of the county auditor, at a sale for State and county taxes, and all deeds or conveyances for lands so sold for taxes shall be *prima facie* evidence of the validity of such purchase.

Real estate, how redeemable.

SEC. 36. Any real estate sold by virtue of this act shall be redeemable under the same regulations and restrictions as real estate, sold for county and State taxes, is made redeemable. All moneys for the redemption of such real estate shall be paid to the treasurer of the corporation.

Trustees may deliver duplicate to auditor.

SEC. 37. The trustees of such town may, at their option, deliver the tax duplicate to the auditor of the proper county, on or before the first day of August in each year, instead of the marshal of such town, and said auditor shall enter said tax, and, if delinquent, the interest and penalty thereon, upon his duplicate.

Treasurer shall collect; his and auditor's compensation.

SEC. 38. The treasurer of such county shall collect the corporation taxes upon such duplicate as other taxes are collected, and pay the same over to the treasurer of such corporation. The auditor and treasurer shall be allowed and paid by the corporation, the same compensation as is paid by the county for like services.

Duty of treasurer of town, trustees, &c.

SEC. 39. The treasurer of every incorporated town shall so keep his accounts as to show when, and from what sources all moneys paid him have been derived, and to whom and when such moneys, or any part thereof, have been paid. The treasurer shall grant all licenses authorized by this act, upon the presentation of the receipt of the marshal, that the money therefor has been paid to said marshal. His books, accounts and vouchers shall at all times be subject to the examination of the board of trustees, and it is hereby made their duty to examine the same at a regular meeting of such board, on some day between the first and last Monday

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of April in each year, and have settlement with the said treasurer.

Exhibit of receipts, and expenditures.

SEC. 40. It shall be the duty of the board of trustees immediately after the annual settlement with the treasurer of said corporation, to publish in a newspaper, if one be printed therein, or if there be no newspaper, then by posting in three or more public places, an exhibit of the receipts and expenditures, specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each.

Duty of clerk.

SEC. 41. The clerk of such town shall have the custody of the records, books and papers of the board of trustees, and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office, and required of him by the by-laws.

Powers and liabilities of marshal.

SEC. 42. The marshal of such town shall possess the powers, and be subject to the liabilities possessed and conferred by law upon constables, in executing the orders of the trustees, or enforcing the by-laws and ordinances of said town.

Trustees to superintend improvements of streets.

SEC. 43. The board of trustees shall superintend the grading, paving and improving of streets and the building and repairing of side-walks.

Duty of fire wardens.

SEC. 44. The fire-wardens shall attend all fires, and give their personal superintendence to extinguishing the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees, in relation to the fire department. Trustees shall by virtue of their office be fire wardens.

Compensation of officers.

SEC. 45. The trustees, clerk, assessor, treasurer and marshal shall respectively receive for their services such compensation as the board of trustees in their by-laws may direct, and said board shall cause to be paid all other officers of such town for their services, a just and reasonable compensation.

Proceedings to grade and pave streets, &c.

SEC. 46. Whenever two-thirds of all the resident owners, in number or in value, of real estate bounding both sides of any street not less than one square, shall petition to have such street graded, paved or otherwise improved, or the side-walks thereof built or repaired; or when two-thirds of the owners of real estate, in number or in value, on one side of such street shall desire a side-walk on that side, it shall be the duty of such board to levy, and cause to be collected, by tax upon the owners of real estate, or lots on such street or part of a street, according to the last assessed valuation of said real estate, such a sum of money as is necessary for the improvement of said street or side-walk, as in said petition requested.

Inhabitants of town not exempt from road tax.

SEC. 47. Nothing contained in this act shall exempt the inhabitants of any town from the payment of highway taxes legally assessed, nor from the formation of one or more road districts, irrespective of the corporate limits of such town.

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Proceedings to include out-lots.

SEC. 48. When two-thirds of the owners of a tier of out-lots adjoining an incorporated town, shall sign a petition asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of said town shall cause said petition to be recorded, and make an order that said tier of out-lots shall thereafter be included, and constitute a part of said corporation, and the inhabitants residing thereon and owners thereof shall be subject to, and entitled to all privileges of said corporation.

Jurisdiction of trustees.

SEC. 49. The trustees shall have jurisdiction over any commons or public ground belonging to said town, and shall have power to regulate, with the consent of a majority of the owners thereof, the banks, shores and wharves of that portion of any navigable stream within its corporate limits; but no ferries heretofore, or which may hereafter be established by law shall be prejudiced or in any manner affected by the provisions of this act.

Proceedings to include new lots.

SEC. 50. Whenever there shall be lots laid off and platted adjoining such town, and a record of the same is made in the recorder's office of the proper county, the trustees may, by a resolution of their board, extend the boundary of such town so as to include such lots; and the lots thus annexed, shall thereafter form a part of such town, and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with the plat and map of survey defining the boundaries of such addition, in the office of the recorder aforesaid.

To annex contiguous territory.

SEC. 51. When any town shall desire to annex contiguous territory thereto, not platted, or laid, or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days' notice by publication in a newspaper printed in such town, if any, otherwise in the county, or if none, then by posting up such notice in five or more public places within the corporation; a copy of such notice shall be served on the owner or owners of such territory, if known, and are residents of the county.

Same.

SEC. 52. The board of county commissioners upon the reception of such petition shall consider the same, and shall hear the testimony offered for or against such annexation; and if, after inspection of the map, and the testimony being heard, such board is of the opinion that the prayer of such petition should be granted, it shall cause an entry to be made on the order book, specifying the territory annexed, with the boundaries thereof, according to the survey, which entry or an attested copy thereof, shall be conclusive evidence in all courts, of such annexation.

Proceedings to dissolve corporation.

SEC. 53. When an application, signed by one-third of the legal voters of any incorporated town, shall be presented to

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the board of trustees, in writing, asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for said board, if they deem the reasons good, to call a meeting of the voters of said town, by giving ten days' notice thereof, as provided in this act, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting, and a poll shall be opened, as at other corporation elections, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote, signed by the president, and attested by the clerk, shall be filed in the clerk's office of the county, and such town shall, at the expiration of six months from the time of holding such meeting, cease to be a corporation, and the property belonging to such corporation, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such town, at any special meeting thereof, may direct.

Dissolution not to affect contracts.

SEC. 54. No such dissolution shall affect the rights of any person, in any contract or agreement to which such corporation is a party.

Town need not show compliance with this act.

SEC. 55. Whenever any suit shall be instituted by an incorporated town, it shall not be required to show its compliance with the provisions of this act, as to its organization, or publication of by-laws or ordinances, unless the same is controverted be affidavit.

How old towns may incorporate under this act.

SEC. 56. Any town heretofore incorporated, may by a resolution of the board of trustees or other municipal board thereof, entered upon the record book of the corporation, become incorporated under this act, but the same shall be deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the clerk of the circuit court of the proper county and entered by him of record. Trustees, and other officers of such incorporated towns, by whatever name designated, performing duties of a like nature to those required of officers created by this act, shall continue to be the officers of such town, by the name as specified in this act, until superseded by the annual election.

Person violating ordinance may be tried before justice.

SEC. 57. Any person violating the provisions of any ordinance of a town organized under this act, to which there may be a penalty affixed, may be prosecuted before a justice of the peace of such town, upon a warrant issued by such justice as in cases of misdemeanor; and such person, upon conviction, shall stand committed until the fine and costs are paid or replevied.

Debts and liabilities not impaired, &c.

SEC. 58. No debt or liability due to or from any incorporated town, shall impair by reason of such town being brought within the provisions of this act, and becoming incorporated under it.

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CHAPTER 109.

AN ACT touching the laying out and vacating towns, streets, alleys, public squares and grounds, or any part thereof; the making out and recording of plats of such towns; and providing for the change of the names of such towns.

[APPROVED MAY 20, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, Any person who may hereafter lay off any town, or addition thereto, in this State, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a correct copy of the plat of said town, with the public grounds, streets, lanes and alleys, with their respective widths properly marked, the lots regularly numbered, and the size of the lots marked by reference to the plat. Person laying off town to cause plat to be recorded.

SEC. 2. Every donation or grant to the public, or to any individual, religious society, corporation, or body politic, noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered a general warranty to the said donee or grantee, for the purposes intended by the donor or grantor. Grants.

SEC. 3. The person desiring to lay off such lots, before offering such plat for record, shall acknowledge the same before the recorder of the proper county, or some justice of the peace thereof; a certificate of which acknowledgment shall be, by the officer taking the same, annexed to such plat or other paper, and recorded therewith. Plat to be acknowledged.

SEC. 4. Every person who may lay off any town, or any addition to any town in this State, and fail to comply with the requisitions of this act, shall forfeit and pay for the use of said town for every month, a sum not exceeding one hundred dollars, nor less than five dollars, to be recorded in the name of the treasurer of the county. Penalty for non-compliance with this act.

SEC. 5. Where any town plat heretofore or hereafter to be recorded, does not clearly describe the size of the lots, streets, alleys, and courses of the lines of said town, and where donations have been given or intended to be given, either to the public or to individuals, or to any religious society, and it has been neglected to insert the same on said plat, any of the proprietors of such town are hereby required to make out such other description as will more clearly explain the true intent; which shall be acknowledged, certified and recorded as required in this act. When plat is imperfect, new one may be made.

SEC. 6. Whenever any person or corporation interested in any incorporated town in this State, may desire to vacate any lot, street, alley, common, public square or part thereof, Proceedings to vacate lot or street.

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in such town, such person or corporation may petition the board of county commissioners for the proper county, giving a distinct description of the property to be vacated, and the names of the persons to be affected thereby; which petition shall be filed with the clerk of said board thirty days previous to the sitting thereof, and notice of the pendency of said petition shall be given for the same space of time, either in a public newspaper printed in said town, or by written notices thereof set up in three of the most public places in said town.

Vacation.

SEC. 7. If no opposition be made to such petition, the board of county commissioners may vacate the same with such restrictions as they may deem for the public good; but if opposition be made, such application shall be continued until the next term of the board, when if the objector consent to such vacation, or if two-thirds of all the real estate holders of the town petition therefor, the board may grant the prayer of the petition.

Vacated property, in whom to vest.

SEC. 8. The part so vacated if it be a lot, shall vest in him who may have the title thereof, according to law; and if the same be a street or alley the same shall be attached to the ground bordering on such street or alley, and all title thereto shall vest in the persons owning the property on each side thereof, in equal proportions, according to the length or breadth of such ground, as the same may border on such street or alley; and whenever a public square shall be vacated the property thereof shall vest in the board of county commissioners, for the use of the county.

Street not to be vacated without consent of owners.

SEC. 9. But no such vacation of a street or alley shall take place, unless the consent of the persons owning the property immediately adjoining thereto, be obtained therefor in writing; which consent shall be acknowledged before some justice of the peace, and filed with said board.

Vacation of addition to town.

SEC. 10. If any person shall lay off an addition to any town which does not improve, and shall be the legal owner of all the lots contained in such addition, such person or any other person who shall become the legal owner thereof, shall have such addition, or any part thereof vacated by applying to the board of commissioners of the proper county, after notice as hereinbefore provided, and proof of ownership of such lots.

Proceedings to change name of town.

SEC. 11. Such board may change the name of any town upon a petition therefor of a majority of the qualified electors of such town, and in case any such change is made, notice thereof shall be given by publication three weeks successively in a newspaper of the county, if any, and if not, by written or printed notices posted up in three of the most public places of such town; and a certified copy of the order of such change shall be recorded in the recorder's office of the county.

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CHAPTER 110.

AN ACT for the more uniform mode of doing Township Business.

[APPROVED MAY 6, 1852.]

County board may lay off townships.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the board of county commissioners in each county may lay off and divide the same into any number of townships that the convenience of the citizens may require, accurately defining the boundaries thereof; and may, from time to time, make such alterations in the number and boundaries of such townships as they may deem proper.

Boundaries to be recorded.

SEC. 2. The description of the boundaries of such township shall be entered at full length in the records of such board, as also all alterations in such boundaries, and all new and additional townships which may be formed.

Townships to remain as they are, subject to alteration.

SEC. 3. The townships now established shall remain as they are, subject to alteration or sub-division, as provided in this act.

Corporate powers.

SEC. 4. Each and every township that now is, or may hereafter be organized in any county in this State, is hereby declared a body politic and [corporate,] by the name and style of "——— township of ——— county," according to the name of the township and of the county in which the same may be organized, and by such name may contract and be contracted with, sue and be sued in any court having competent jurisdiction.

Election of trustees, clerk and treasurer; oath, and tenure of office.

SEC. 5. The qualified voters in each township shall, on the first Monday in April, annually, at the usual place of holding elections in such township, elect three trustees, a clerk, and treasurer, who shall severally hold their offices for one year, and until their successors are elected and qualified; and before entering upon the duties of their respective offices, they shall take an oath or affirmation, before a justice of the peace of the proper township for the faithful performance of their respective offices.

President.

SEC. 6. The trustees at the first meeting after their election, shall designate one of their number to act as president of their board in the transaction of business.

Treasurer to give bond.

SEC. 7. The treasurer, before entering upon the duties of his office, shall execute a bond, payable to the State of Indiana, in such penalty, not less than two hundred dollars, and with such surety, as the trustees shall approve.

Vacancies in office of clerk or treasurer, how filled.

SEC. 8. Any vacancy occurring in the office of clerk or treasurer shall be filled by the appointment of the trustees until duly filled by election.

Record of proceedings.

SEC. 9. The clerk shall keep a true record of all the proceedings of the board of trustees in a record book, to be

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provided for that purpose, and the record of each meeting shall be signed by the president and attested by the clerk.

Duty of treasurer.

SEC. 10. The treasurer shall receive all moneys belonging to the township, and pay the same out to the order of the trustees, signed by the president of the board thereof, and attested by the township clerk.

Meetings.

SEC. 11. The first meeting of the trustees shall be held on or before the second Monday of April, annually, after their election. They may meet upon their own adjournment; or a meeting may, at any time, be called by the president, and the concurrence of two of such trustees shall be sufficient for the transaction of business.

Who to be judges and clerks of elections.

SEC. 12. The trustees shall be the judges of all elections, and shall designate the place where elections shall be held in their respective townships, and the township clerk, together with some other citizen of the township, appointed by the trustees, shall constitute the clerks thereof.

Duty of trustees in relation to highways.

SEC. 13. The township trustees in their respective townships, shall have the care and superintendence of the highways and bridges therein, and it shall be their duty:

First. To divide their respective townships into convenient highway districts, and the same to be changed at pleasure.

Second. To appoint viewers to survey and lay out and open new roads, change and alter old ones within their respective townships, in such manner as may be prescribed by law.

Third. To fill all vacancies that occur in the office of supervisor of highways in their respective townships.

Fourth. To determine, annually, upon the amount of tax that shall be assessed for road purposes within the township.

Fifth. To see to the proper application of all moneys belonging to the township for road purposes, and direct the application thereof.

Sixth. They shall be the overseers of the poor and fence viewers of their respective townships; and,

Seventh. Shall have the care and management of all property, real and personal, belonging thereto, and superintend all the interests thereof.

Boundaries of road districts.

SEC. 14. The trustees shall cause a record to be made, accurately defining the boundaries of each road district; and all alterations made in the boundaries of such districts, shall be accurately described on the records of the board.

Trustees to manage moneys, and fix amount of taxes; tax, how collected.

SEC. 15. The trustees shall superintend all the pecuniary concerns of the township, and shall, on or before the first day of May, annually, determine on the amount of tax that shall be assessed on the taxable property of such township for township and road purposes, and cause the clerk of the township to report the same to the county auditor of the proper county, who shall enter the same upon the assessment roll and duplicate in a separate column, and the treasurer of the

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proper county shall collect the same as other taxes are collected.

County treasurer to pay over to township treasurer.

SEC. 16. The county treasurer, annually, immediately after settling with the county auditor, shall, on the order of the board of trustees of the proper township, pay over to the treasurer thereof all moneys in his hands belonging to each township, taking his receipt therefor.

Vacancy in office of trustee, how filled.

SEC. 17. All vacancies in the office of township trustees, shall be filled by the board doing county business; and the trustees so appointed shall continue in office until their respective successors are elected and qualified.

Annual settlements.

SEC. 18. The trustees shall, annually, in the month of February, of each year, settle with and audit the accounts of the treasurers, and the supervisors of roads in their respective townships; and shall, within fifteen days thereafter, publish a detailed statement of amounts received and expended for township and road purposes during the preceding year, either by posting up a certified statement thereof at the place of holding elections, or by publishing the same in some public newspaper published in the township.

Compensation of township officers.

SEC. 19. The clerk and treasurer shall receive such compensation for their services as the trustees shall allow; and each of such trustees shall receive as a compensation the sum of seventy-five cents per day, while actually engaged as such; and all allowances shall be entered upon the township record, which record shall always be open for public inspection.

Process against township, how served.

SEC. 20. In all prosecutions against a township, process shall be served by delivering a certified copy thereof with the township clerk at least twenty days before the return day of such process; and the trustees may appoint an agent or attorney to defend any suit or proceedings in which the township may be interested.

Penalty for failing to perform duty of office.

SEC. 21. Should any person elected or appointed to any office under this act, fail to perform any duty required of him by any provision thereof, such person so failing shall forfeit and pay to such township any sum not exceeding one hundred dollars, to be recovered in a civil action in the name of the township, before any court having competent jurisdiction.

CHAPTER 111.

AN ACT prescribing the duties of Treasurer of State.

[APPROVED MAY 20, 1852.]

Bond.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Treasurer of State shall, before entering upon the duties of his office, execute his official bond

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in the penal sum of one hundred thousand dollars to be approved by the Governor.

Shall account for all moneys.

SEC. 2. He shall account for, and pay over all money which may be received by him as such treasurer, and deliver to his successor in office, all books, moneys, vouchers, securities and effects of his office.

What moneys are to be paid into the State treasury.

SEC. 3. The moneys derived from the following sources shall be paid into the State Treasury:

First. All moneys derived from taxes assessed and collected under any law of this State, providing for the assessment and collection of a revenue for State purposes.

Second. All moneys borrowed on the credit of the State by authority of law, by the treasurer or any other authorized agent of the State.

Third. All moneys received on account of the sale of State bonds, heretofore disposed of for internal improvement purposes.

Fourth. All moneys and interest thereon arising from the sale of lands, lots, or other property belonging to, or held in trust by the State.

Fifth. All moneys arising from the sale of seminary, college or saline lands, or reservations, or other lands belonging to, or held in trust by the State.

Sixth. All moneys and funds belonging or loaned to, or held in trust by the State, where no other disposition thereof is made or required by law.

Seventh. All interest, profits and income arising or derived from any moneys or funds specified in this section.

Eighth. All dividends arising from bank or other stock appropriated to the payment of any part of the interest of the public debt.

What moneys to be received and accounts kept by treasurer. Books to be open to inspection.

SEC. 4. *First.* The treasurer shall receive of the several county treasurers, collectors of the public revenue, and of all other officers and persons, all moneys whatsoever, which are required by any act of the General Assembly to be paid into the Treasury of the State.

Second. Keep in books provided for that purpose, correct and separate accounts of all the moneys received by him by virtue of his office.

Third. Keep in like manner correct accounts of all moneys paid by him out of the treasury.

Fourth. Make out monthly accounts of all moneys received by him into the treasury, and all moneys by him paid out of the treasury, and a list showing the date and amount of the warrants on which such payments have been made, and deliver the same monthly to the auditor [of State.]

Fifth. Lay before the general assembly biennially, during the first week of the session, a full exhibit and statement of all moneys received by him into and paid out of the treasury, showing under separate and appropriate heads on what account

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or from what source received, and for what particular object or service the same has been paid out.

Sixth. Permit the books, papers, and transactions of his office to be open at all times to the inspection of the Governor, to either branch of the General Assembly, or to any committee thereof authorized by law, or by the branch to which it belongs, to examine said office.

Treasurer's receipt to debtor for money.

SEC. 5. When any debtor shall pay any sum of money into the [State] treasury, the treasurer on receiving the same, shall make out a receipt for the amount, and deliver the same to the Auditor [of State,] who shall give the treasurer a receipt therefor; and said treasurer shall deliver the auditor's said receipt to the person paying the money therein specified.

Money deposited in bank shall be to credit of treasurer.

SEC. 6. All moneys of the State, deposited by any public debtor in any bank for the use or to the account of the State except when otherwise directed by law, shall be deposited to the credit of the Treasurer of State, and subject to his order.

Payment of warrants.

SEC. 7. The treasurer shall pay all warrants drawn on him by the auditor out of the proper moneys appropriated by law for the payment of the service or demand, on account of which such warrant was allowed or issued.

CHAPTER 112.

AN ACT in relation to County Treasurers.*

[APPROVED JUNE 4, 1852.]

Tenure of office. Bond.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana,* That the term of office of county treasurer shall commence at the expiration of the term of the present incumbent; and he shall, before entering upon the duties of his

* In a suit by the State on the relation of a county treasurer, on the bond of a collector of county revenue, the treasurer is an incompetent witness for the State on account of his interest in the event of the suit.—*Jones et al.* vs. *The State*, 5 Blackf. 141. The judgment in such case, if the plaintiff fail, should direct the costs to be collected from the county, not from the treasurer.—*Ibid.* Also, see 7 Blackf. 604. A county treasurer holds his office till his successor is elected and qualified. Under the statute of 1843, requiring a county treasurer to give bond on or before the 12th day of August, &c., the county commissioners may approve of the bond before or at their first session thereafter.—*Hum* vs. *The State*, 7 Blackf. 314.

If, after a county treasurer has given bond, the law respecting county treasurers be changed by extending the time for their making settlements, payments, &c., and the said treasurer fail to discharge his duties under the new law, he and his sureties will be liable on their bond.—*Kindle et al.* vs. *The State*, 7 Blackf. 586.

See *The State* vs. *Pidgeon*, 8 Blackf. 132.

Debt on county treasurer's bond. Breaches assigned: 1, the treasurer's failure to pay over money, &c.; 2, 3 and 5, his non-payment of county orders; 4, his failure to make a return and settlement, his non-payment over of the money in his hands according to the statute, and his failure to have the money before the board of commissioners; 6, his failure to pay over certain money in his hands,

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office, execute his official bond, with at least four freehold sureties, in a penalty of not less than double the amount of money which may come into his hands at any time during his term, by virtue of his office, to the acceptance of the board of county commissioners.

Shall receive and disburse money.

SEC. 2. He shall receive all money coming to the county, and disburse the same on the proper orders issued and attested by the auditor.

To give receipts for money.

SEC. 3. He shall give to any person paying money to him as treasurer, a receipt therefor, which receipt, except it be for taxes, shall be deposited by such person with the auditor, who shall give him a quietus for the same.

May appoint deputies.

SEC. 4. Treasurers may appoint one or more deputies, and may take from them bond and surety,—may remove such deputies at pleasure, and such treasurer and his sureties shall be liable for all official acts of such deputies.

Office, where and how kept, &c.

SEC. 5. The treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for the transaction of business during business hours; and he and his deputy are authorized to administer all oaths necessary in the discharge of [the duties of] his office.

How he shall keep his books.

SEC. 6. He shall so arrange and keep his books that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures, by one general account; but no money received for taxes charged on the duplicate of the current year, shall be entered on his account with the county until after his annual settlement made therefor.

Books, &c., subject to inspection of county board.

SEC. 7. He shall at all times keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once each year.

Payment of county orders.

SEC. 8. He shall pay all orders of the auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order the date of redemption, over his signature. If there be no funds to pay such order when presented, he shall indorse thereon "not paid for want of funds," and the date of such presentment, over his signature, which shall entitle such order to draw thenceforth legal interest: *Provided*, that such interest shall cease from the date of notice by publication in some newspaper printed or circulated

being the county revenue, &c., to his successor in office. *Held*, that the 6th breach was good and the others bad. *State* vs. *Bottorf et al.*, 8 Blackf. 337. See also, *The State* vs. *Cunningham*, 8 Blackf. 339.

In a suit on the bond of the treasurer of Jay county, for not paying to the treasurer of Blackford county, a certain part of the surplus revenue under the act of 1844, it was held that the assignment of the breach should show that means had come into the hands of the treasurer of Jay county enabling him to comply with the law, and that a specified sum had been demanded of him at the proper place. *State* vs. *Votaw et al.*, 8 Blackf. 2. Such suit may be brought on the relation of the county treasurer. The surplus revenue received by a county is not the property of the county.—*Ibid.*

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in his county, to be given by the treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case.

Same; when interest is due.

SEC. 9. When the county treasurer shall redeem any order on which any interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

Orders to be paid in the order of presentment.

SEC. 10. County orders shall be redeemed by the treasurer according to priority of the time of presentment: *Provided*, such orders payable out of county revenue, shall be received in payment of county taxes, without any regard to priority of presentment, or number; but such treasurer shall not pay any balance thereon, over and above said tax, when there are outstanding orders unpaid for want of funds.

Treasurer to deposit redeemed orders with auditor.

SEC. 11. The treasurer shall, on the first Mondays in March, June, September and December, in each year, deposit with the auditor all county orders redeemed, who shall receipt therefor.

When treasurer may be removed from office.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed from office by the board of county commissioners of his county.

Settlement with commissioners, &c.

SEC. 13. The treasurer shall annually make complete settlement with the board of county commissioners, at the regular June term thereof, and shall at the expiration of his term, deliver to his successor all public money, books and papers in his possession.

Per cent. not allowed on money received from predecessor.

SEC. 14. No per centage shall be allowed to treasurers for any money received from his predecessor in office.

CHAPTER 113.

AN ACT concerning Trusts and Powers.

[APPROVED JUNE 17, 1852.]

Trusts to be in writing and signed.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, No trust concerning lands, except such as may arise by implication of law, shall be created, unless in writing, signed by the party creating the same, or by his attorney, thereto lawfully authorized in writing.*

* A *trust estate* in real property, as separate from the legal ownership, may either be created by an express declaration of the trust, or it may be raised upon certain facts by implication of law.—*Elliott* vs. *Armstrong*, 2 Blackf. 198.

If A. purchase land with his own money, and the deed be made to B., a trust results in favor of A., provided there be no circumstance in the case to rebut this presumption of law.—*Ibid.*

To a bill in chancery by the grantee of a *cestui que trust* against the trustee to obtain the legal title, the grantor must not be a party either as complainant or defendant.—*Ibid.*

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Purchaser for a valuable consideration not to be defeated.

SEC. 2. No such trust, whether implied or created, shall defeat the title of the purchaser for a valuable consideration, and without notice of the trust.

Record of trust actual notice.

SEC. 3. The record of such trust in the proper county, shall be deemed actual notice thereof to every person claiming under a conveyance made, or lien created, after such recording.

Trustee of rents and profits cannot dispose of interest, unless, &c.

SEC. 4. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can dispose of such interest, unless the right to make disposition thereof is conferred by the instrument creating such trust; but the

The estate of a *cestui que trust* may be sold and conveyed by him, as well as any other estate.—*Ibid.*

The estate of a bare trustee is not subject to be sold on execution against him.—*Ibid.*

A complainant in chancery may prove by parol evidence, in order to show a resulting trust, that the purchase money for real estate conveyed to another was paid by himself, though the deed state that the money was paid by the grantee, and the answer contains a denial of this trust.—*Ibid.*

The trust in real estate conveyed to A., resulting in favor of B. in consequence of his payment of the purchase money, is a kind of arbitrary implication raised to stand until some reasonable proof be brought to the contrary; and if the money was paid for the express purpose of vesting in A., both the beneficial and legal interest, no trust can result in favor of B.—*Ibid.*

A trustee, no matter how or from whom he derives his authority, cannot purchase the trust estate so as to make profit to himself. He is not prohibited from purchasing; but his purchase when made is for the benefit of the *cestui que trust*, who may, if he apply within a reasonable time, have a re-sale. If the property be offered for sale a second time, and there be no advance, the trustee is held to his purchase.—*Brackenridge* vs. *Holland et al.*, 2 Blackf. 377.

If one man buy land with his own money, and takes the deed in the name of another, a trust results by implication in favor of him who paid the money. —*Jennison et al.* vs. *Graves et al.*, 2 Blackf. 440.

The existence of a resulting trust may be proved by parol evidence, in opposition to the face of the deed and to the answer of the trustee; but to establish the trust under these circumstances, the clearest and strongest testimony must be produced.—*Ibid.*

If a son of full age purchase land to be paid for in labor, and his father being employed for the purpose by the son, performs a part of the work; or if the payment is to be in money, and the father lend his son part of the money with which the payment is made a trust *pro tanto* will not in either of these cases result to the father.—*Ibid.*

If A. purchase land with B.'s money, and takes the conveyance in his own name, he holds the land in trust for B., and the land so held is liable for the debts of the *cestui que trust*.—*Blair* vs. *Bass*, 4 Blackf. 539.

Such trust may be established by parol testimony, even against the answer of the trustee. In such case, however, the bill must be supported not only by two witnesses, or by one witness and corroborating circumstances, but the testimony must be clear and should be received with great caution.—*Ibid.*

It cannot be shown by parol evidence, in order to establish a trust in real estate, that the person having the legal title purchased the estate with his own money for the use of another; that would be to overturn the statute of frauds.—*Ibid.*

A and B., regularly appointed by a circuit court, trustees, &c., sold in discharge of their trust, certain real estate, and took promissory notes payable to themselves, their successor or successors in the trust, for the purchase money. They afterwards resigned their appointment and C. was regularly appointed a trustee to receive and collect the notes. *Held*, that C. could not by virtue of his appointment sue on the notes in his own name.—*Ingersoll et al.* vs. *Cooper*, 5 Blackf. 426.

If a father purchase real estate with his own money in the names of his children, the purchase is an advancement to the children, and not a resulting trust for the father.—*Stanley* vs. *Branon et al.*, 6 Blackf. 193.

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interest of every person for whose benefit a trust for the payment of a sum in gross is created, is assignable.

Sec. 5. Every sale, conveyance or other act of a trustee, in contravention of a trust, shall be void. Sales in contravention of a trust void.

Sec. 6. When a conveyance, for a valuable consideration, is made to one person, and the consideration therefor paid by another, no use or trust shall result in favor of the latter; but the title shall vest in the former, subject to the provisions of the next two sections. When conveyance is made to one, and consideration paid by another no trust to result.

Sec. 7. Every such conveyance shall be presumed fraudulent, as against the creditors of the person paying the consideration therefor, and where a fraudulent intent is not disproved, a trust shall, in all cases, result in favor of prior creditors, to the extent of their just demands; and also in favor of subsequent creditors, if there be sufficient evidence of fraudulent intent. Such conveyance fraudulent as against creditors.

Sec. 8. The provisions of the section next before the last, shall not extend to cases where the alienee shall have taken an absolute conveyance in his own name, without the consent of the person with whose money the consideration was paid; or where such alienee, in violation of some trust, shall have purchased the land with moneys not his own, or where it shall be made to appear that by agreement, and without any fraudulent intent, the party to whom the conveyance was made, or in whom the title shall vest was to hold the land or some interest therein in trust for the party paying the purchase money or some part thereof. When the alienee takes an absolute conveyance.

Sec. 9. No person who shall in good faith pay money to a trustee, authorized to receive the same, shall be responsible for the proper application of such money; nor shall any right or title, derived by him from such trustee, in consideration of such payment, be called in question in consequence of misapplication by the trustee of such money. Money paid to a trustee in good faith.

Sec. 10. Upon the death of a sole or surviving trustee of an express trust, the same shall vest in the court having jurisdiction thereof, and such court shall forthwith appoint a successor, in whom the trust shall vest. When trustee dies, trust to vest in the court.

Sec. 11. Upon petition of any trustee of an express trust, a court having jurisdiction may accept his resignation, and discharge him from the trust, upon such terms as the rights of the persons interested in the execution of the trust may require. Resignation of trustee.

Sec. 12. Trustees having violated or attempted to violate any express trust, or becoming insolvent, or of whose solvency or that of their sureties there is reasonable doubt, or for other cause in the discretion of a court having jurisdiction, may on petition of any person interested, after hearing, be removed by such court, and all vacancies in express trusteeships may be filled by such court. Removal of trustees.

Sec. 13. A conveyance or devise of lands to a trustee whose title is nominal only, and who has no power of dispo- Conveyance to a trustee, when void.

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sition or management of such lands, is void as to the trustee, and shall be deemed a direct conveyance or devise to the beneficiary.

Power of revocation.

SEC. 14. A grantor of lands reserving an absolute power of revocation, shall be deemed an absolute owner, as regards creditors and purchasers.

When power transcended, estate not thereby void.

SEC. 15. No disposition by virtue of a power, shall be void on the ground that it is more extensive than was authorized by the power. But every estate or trust so created, so far as embraced by the terms of the power, shall be valid.

Power may be given to a married woman without the consent of her husband.

SEC. 16. A general and beneficial power may be given to a married woman, to dispose of or devise, without the concurrence of her husband, lands conveyed or devised to her in fee.

Power, when irrevocable.

SEC. 17. Every power, beneficial or in trust, shall be irrevocable, unless an authority to revoke it is reserved in the instrument creating the same.

Power to sell.

SEC. 18. Where a power to sell lands shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in any person who shall become entitled to the money so secured to be paid.

Provisions of act not to extend to simple powers of attorney.

SEC. 17. The provisions of this act relative to powers, shall not extend to a simple power of attorney to convey lands, in the name and for the benefit of the owner.

CHAPTER 114.

AN ACT providing for the government of the State University, the management of its Funds, and for the disposition of the Lands thereof.

[APPROVED JUNE 17, 1852.]

State University recognized.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, The institution established by an act entitled "an act to establish a college in the State of Indiana," approved January 28, 1828, is hereby recognized as the University of the State.

Powers and duties of trustees.

SEC. 2. The present trustees, three of whom shall reside in the county of Monroe, and their successors, shall be a body politic, with the style of "The Trustees of Indiana University;" in that name to sue and be sued; to elect one of their number president; to elect a treasurer, secretary, and such other officers as they may deem necessary; to prescribe the duties and fix the compensation of such officers; to fill all vacancies in such board; which appointment shall continue until the next meeting of the General Assembly, at

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which time the General Assembly shall fill all such vacancies; to possess all the real and personal property of such university for its benefit; to take and hold in their corporate name any real or personal property, for the benefit of such institution; to expend the income of the university for its benefit; to declare vacant the seat of any trustee who shall absent himself from two successive meetings of the board, or be guilty of any gross immorality, or breach of the by-laws of the institution; to elect a president, such professors and other officers for such university as shall be necessary, and prescribe their duties and salaries; to prescribe the course of study and discipline, and price of tuition in such university; and to make all by-laws necessary to carry into effect the powers hereby conferred.

Annual meeting

SEC. 3. Said trustees shall annually meet at the town of Bloomington, at least three days preceding the annual commencement of the university.

Five to constitute a quorum.

SEC. 4. Five of such trustees shall constitute a quorum; and, in case an emergency is declared by the faculty, after there shall have been a called session, at which the other members failed to attend, the three trustees residing in the county of Monroe may fill vacancies in the faculty of the university, and board of trustees; and, in case there should not be three trustees in attendance upon such emergency, then those that are in attendance, together with such members of the faculty as may be in attendance, shall fill such vacancies; but appointments thus made shall expire at the next meeting of the board.

Seminary townships.

SEC. 5. The trustees of said university shall receive the proceeds of the sales and rents of the three reserved sections in the seminary township in Monroe county, and the same shall be paid to the treasurer of said trustees, on their order.

Interest on loans.

SEC. 6. The interest arising from loans of the State university fund shall, as received at the State Treasury, be paid on the warrants of the Auditor of State; such warrants to be granted on allowances made to the persons entitled thereto, by the board of trustees, and duly certified by their secretary.

Faculty of the University, and their powers.

SEC. 7. The president, professors and instructors shall be styled "The Faculty" of said university, and shall have power:

First. To enforce the regulations adopted by the trustees for the government of the students.

Second. To which end they may reward and censure, and may suspend those who continue refractory, until a determination of the board of trustees can be had thereon.

Third. To confer, with the consent of the trustees, such literary degrees as are usually conferred in other universities, and in testimony thereof to give suitable diplomas, under the seal of the university and signature of the faculty.

No religious qualification.

SEC. 8. No religious qualification shall be required for any student, trustee, president, professor, or other officer of such

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university, or as a condition for admission to any privilege in the same.

No sectarian tenets.

SEC. 9. No sectarian tenets shall be inculcated by any professors at such university.

Two students free of charge.

SEC. 10. The trustees shall provide for the tuition, free of charge, of two students from each county in this State, to be selected by the board of county commissioners.*

Secretary of the board to notify county auditor of vacancy.

SEC. 11. The secretary of the board shall notify the county auditor of each county of the State, whenever there shall not be in attendance at the university, the number of students which such county is entitled to send free of tuition, of which such auditor shall notify the board of commissioners of such county, at their next meeting.

Treasurer of the University.

SEC. 12. The treasurer of the university shall give bond in a penalty, and with surety to be approved by such board, payable to the State, conditioned for the faithful discharge of his duties, which bond shall be filed with the Auditor of State.

Board of visiters.

SEC. 13. The Governor, Lieutenant Governor, Speaker of the House of Representatives, Judges of the Supreme Court, and Superintendent of Common Schools, shall constitute a board of visiters of the university, and any three thereof a quorum.

Failure of board, &c.

SEC. 14. In case the members of such board of visiters fail to attend the annual commencement exercises of the university, the president of the board of trustees shall report such of them as are absent to the next General Assembly in their annual report.

Duties of board of visiters.

SEC. 15. Such board of visiters shall examine the property, the course of study and discipline, and the state of the finances of the university, and recommend such amendments as they may deem proper, the books and accounts of the institution being open to their inspection, and they shall make report of their examination to the Governor, to be by him laid before the next General Assembly.

Secretary of board of trustees.

SEC. 16. The secretary of the board of trustees shall keep a true reccord of all the proceedings of said board and certify copies thereof. He shall also keep an account of the students in the university according to their classes, stating their respective ages and places of residence, and a list of all graduates.

Duties of treasurer.

SEC. 17. The treasurer of said university shall,

First. Keep true accounts of all money received into the treasury of said university, and of the expenditure thereof.

Second. Pay out the same on the order of the board of trustees, certified by their secretary.

Third. Collect the tuition fees due the same.

Fourth. Make semi-annual settlements with the board of trustees.

* Each county in the State has a right to send two students, free of charge, to the Indiana University, in the law department, as well as in the other departments of the institution.—*McDonald* vs. *Hagins*, 7 Blackf. 525.

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Fifth. Submit a full statement of the finances of the university, his receipts and payments, at each meeting of the board of trustees.

Sixth. Submit his books and papers to the inspection of the trustees and visiters.

To report to superintendent of com. schools.

SEC. 18. The board of trustees, their secretary and treasurer, shall report to the superintendent of common schools, all matters relating to the university, when by him required.

Public lecturer.

SEC. 19. One member of the faculty, to be designated by a majority thereof, of which the secretary of the board shall be informed, shall by himself or competent substitute, deliver a public lecture on the principles and organization of the university, its educational facilities, (being careful not to disparage the claims of other institutions of learning in the State,) in at least fifteen different counties of the State, of which he shall give due notice; and in a vacation of less duration than one month, a member of the faculty to be designated as aforesaid, shall deliver such lecture in at least three different counties; a brief statement of which lectures shall, by the persons delivering them, be reported to the board of trustees annually, to be by them incorporated in the annual report to the General Assembly; but no two such lectures shall be delivered in the same county, until all the counties of the State have been lectured in.

Duties of lecturer.

SEC. 20. Such Lecturers shall make such geological examinations, and collect such mineralogical specimens as they may be able to make and procure, a report whereof they shall make to the board of trustees to be by them incorporated in their annual report to the General Assembly; and such specimens, [together with those] they may procure by voluntary donations, they shall deposit in a suitable room in the university buildings, to be fitted up for that purpose.

5,000 copies of report to be printed annually.

SEC. 21. The Govenor of the State shall order the printing annually of five thousand copies of the annual report of the board of trustees, twenty-five hundred of which shall be for the use of the members of the General Assembly, and twenty-five hundred for the faculty.

Contents of report.

SEC. 22. Such report shall contain what is now included in the annual catalogue, with such other matters as may be deemed useful to the cause of education, connected with the university.

Notice of commencement.

SEC. 23. The board of trustees through its president shall give at least one month's notice of the commencement of each session of the university, in at least one newspaper in the cities of Indianapolis, Louisville in the State of Kentucky, and in New Orleans in the State of Louisiana.

Committee to examine buildings.

SEC. 24. The board of trustees shall annually appoint a committee of their body to examine the univeristy buildings and grounds adjacent, who shall report the kind and cost of repairs, if any are needed, and one of the number of the faculty shall be appointed to take care of such buildings and grounds.

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Normal department.

SEC. 25. Such trustees shall establish a normal department for instruction in the theory and practice of teaching, free of charge, of such young persons, [male and female,] residents of the State, as may desire to qualify themselves as teachers of common schools within the State, under such regulations as such board of trustees may make, in regard to admitting [to], kind, and time of delivery of lectures in such department, and the granting of diplomas therein; and such regulations shall be incorporated in the annual report of the trustees to the General Assembly.

Agricultural department.

SEC. 26. Such trustees shall also appoint [establish] an agricultural department in such university, under proper regulations, which shall likewise be set forth in their annual report.

Repealing clause.

SEC. 27. All laws and parts of laws coming in conflict with this act are hereby repealed.

Fund, of what to consist.

SEC. 28. The university fund shall consist of the lands in Monroe and Gibson counties, and proceeds of sales thereof, and all donations for the use of such university, where the same is expressly mentioned in the grant, or where in such grant the term university only is used, the principal of which fund, when paid into the State Treasury, shall be loaned, and the annual interest thereon applied to the current expenses of the university, upon warrants drawn on the Treasurer of State by the Auditor of State, on the requisition of the board of trustees, signed by the president and attested by the secretary thereof.

Auditor of State to loan funds upon real estate security.

SEC. 29. It shall be the duty of the Auditor of State to loan out such fund upon real estate security, and he shall duly inform himself of the value of all real estate offered in pledge, and shall be judge of the validity of the title thereof; and all persons applying for a loan shall produce to said auditor, the title papers to such real estate, showing title in fee simple, without incumbrance, and not derived through any executor's or administrator's sale, or sale on execution.

Form of mortgage.

SEC. 30. The mortgage to be taken may be in the following form in substance, to-wit:

"I, A. B., of the county of ———, in the State of Indiana, do assign over and transfer to the State of Indiana, all (here describe the land,) which I declare to be mortgaged for the payment of ——— dollars, with interest at the rate of seven per cent. per annum, payable in advance, according to the conditions of the note hereunto annexed."

Form of note.

SEC. 31. The note accompanying the same may be in substance as follows, to-wit:

I, A. B., promise to pay the State of Indiana, on or before the ——— day of ——— the sum of ——— with interest thereon at the rate of seven per cent. per annum, in advance, commencing on the ——— day of ———, 18—, and do agree that in case of failure to pay any instalment of said interest, the said principal shall become due and collectable, together with all arrears of interest; and on any such failure

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to pay principal or interest when due, five per cent. damages on the whole sum due shall be collected with costs, and the premises mortgaged may be forthwith sold by the auditor of public accounts, for the payment of such principal sum, interests, damages and costs.

Amount and duration of loan.

SEC. 32. No greater sum than five hundred dollars shall be loaned to any one person out of such fund; nor shall the loan be for a longer period than five years, and the sum loaned shall not exceed one half of the appraised value of the premises to be mortgaged, clear of all perishable improvements, and the auditor may reduce the amount to be loaned on any such valuation, when, for any cause, he may have reason to believe the same was not in proportion to the prices of similar property selling in the vicinity; such valuation to be made from the valuation of the same property, in the assessment of the State revenue.

Interest.

SEC. 33. The rate of interest required shall be seven per cent. in advance, payable annually; and on failure to pay any instalment of interest when due, the principal shall forthwith become due; and the note and mortgage may be collected.

Mortgage to have priority.

SEC. 34. Such mortgages shall be considered as of record, from the date thereof, and shall have priority of all mortgages or conveyances not previously recorded, and of all other liens not previously incurred, in the county where the land lies.

Mortgage to be recorded.

SEC. 35. It shall be the duty of the auditor to have such mortgages recorded with due diligence; the expense whereof shall be borne by the mortgagor, and may be retained out of the money borrowed.

Certificate concerning incumbrances.

SEC. 36. The person applying for a loan, shall file with the auditor the certificate of the clerk and recorder of the county in which the land lies, showing that there is no conveyance of, or incumbrance on said land, in either of their offices.

Oath of title.

SEC. 37. Such person shall also, before he receives the money to be loaned, make oath to the truth of an abstract of the title to his said land, and that there is no incumbrance, or better claim, as he believes, upon said land.

Warrant on the treasurer.

SEC. 38. On making any loan of such fund, the auditor shall draw his warrant on the treasurer, in favor of the borrower; and the treasurer shall pay the same, and charge it to the proper fund.

Loans and interest to be paid into State Treasury.

SEC. 39. All loans refunded, and all interest, shall be paid into the State Treasury, and the treasurer's receipt shall be filed with the Auditor of State, who shall give the payer a quietus for the amount thereof, and make the proper entries upon his books.

Satisfaction of mortgage.

SEC. 40. Whenever the amount due on any mortgage shall be fully paid, and the treasurer's receipt filed therefor, the auditor shall endorse on the note and mortgage, that the

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same has been fully satisfied, and surrender them to the person entitled thereto; and on the production of the same, with such endorsement thereon, the recorder of the proper county shall enter satisfaction upon the record thereof.

Loan unpaid, to be collected.

SEC. 41. When the interest or principal of any such loan shall become due and remain unpaid, the auditor shall proceed to collect the same by a suit on the note, or by sale of the mortgaged premises, or both, as to him may seem most advisable; he may also, by proper action, obtain possession of the mortgaged premises.

No stay of execution or appraisement allowed.

SEC. 42. In case of suit on such note, and judgment thereon, no stay of execution or appraisement of property shall be allowed.

Auditor to advertise property for sale.

SEC. 43. On failure to pay any interest or principal when due on any such mortgage, the auditor shall advertise the mortgaged property for sale in one or more of the newspapers printed in this State, for sixty days; such sale to take place at the court house door in Indianapolis.

Auditor and Treasurer of State to attend sale.

SEC. 44. At the time appointed for such sale, the Auditor and Treasurer of State shall attend, and the Auditor shall make sale of so much of the mortgaged premises, to the highest bidder, for cash, as will pay the amount due for principal, interest, damages and costs of advertising and selling the same; and such sales may be in parcels so that the whole amount required be realized.

No one bidding, Auditor to buy in property, &c.

SEC. 45. In case no one will bid the full amount due as aforesaid, the Auditor shall bid on the same, on account of the proper fund; and as soon thereafter as may be, shall sell the same to the highest bidder for cash, or on a credit of five years, interest being payable annually in advance.

Sale not to be for less than amount charged on land.

SEC. 46. The sale authorized in the preceding section, shall not be for less than the amount chargeable on such land; and if for more, the overplus shall be paid to the mortgagor, his heirs or assigns.

Treasurer to make a statement of sale, which shall be signed, recorded, &c.

SEC. 47. The Treasurer shall attend and make a statement of such sales, which shall be signed by the Auditor and Treasurer, and, after being duly recorded in the Auditor's office, shall be filed in the Treasurer's office; and such record, or a copy thereof, authenticated by the Auditor's or Treasurer's certificate, shall be received as evidence of the matters therein contained.

No deed to be made to the State.

SEC. 48. When any land is bid off by the State at such sale, no deed need be made therefor to the State; but the statement of such sale, and the record thereof made, as in the preceding section required, shall vest the title in the State for the use of the fund.

Certificate of sale.

SEC. 49. In case of a sale of any such lands to any person for cash, on the production of the Treasurer's receipt for the purchase money, the Auditor shall give to the purchaser a certificate, which shall entitle him to a deed for said land, to be

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executed by the Governor of this State, and recorded in the office of the Secretary of State.

Land sold on a credit, purchaser to have a deed.

SEC. 50. In like manner, when any tract bid off by the State is sold on a credit, on the execution and delivery of a note and mortgage for the proper amount, as in other cases required, the purchaser shall be entitled to a deed for the same, to be made as prescribed in the preceding section; and the transaction shall be entered, and appear upon the Auditor's and Treasurer's books as a payment of the sum bid, and a re-loan of the same to the purchaser, and the proper receipts and warrants shall pass therefor.

Compensation of auditor and treasurer.

SEC. 51. For the services of the auditor and treasurer in conducting such sales they shall be entitled to receive five per cent. damages chargeable on such sales.

Officers to keep entries.

SEC. 52. The auditor and treasurer shall keep fair and regular entries of the sums received, and paid out on account of said fund, and shall include the same in their annual reports.

Accounts with borrowers.

SEC. 53. In addition thereto, the auditor shall keep fair and regular accounts with the borrowers of said fund, and shall report the names of borrowers with his annual report.

Interest may be loaned.

SEC. 54. Should any interest remain on hand not wanted for the use of the university, the same may be loaned as other funds.

Commissioners of the reserved townships.

SEC. 55. The care and disposition of the lands belonging to and for the use of said university, remaining unsold or unpaid for, shall be vested in the present commissioners of the reserved townships, in the counties in which such lands may lie, who shall sell such as remain unsold, and such as are forfeited for non-payment on such terms and under such regulations as the board of trustees of such university may provide, except that in every instance the interest on the purchase money must be paid in advance, and no purchaser, his heirs or assigns, shall have the right to cut down or destroy timber standing upon such land other than for the erection of fences and buildings thereon, or for fire-wood to be used on the premises and in fairly improving it for cultivation.

Commissioners to execute certificate to purchaser of land.

SEC. 56. On the first payment for any such land being made, the proper commissioner shall execute to the purchaser a certificate therefor, and on final payment the original certificate shall be surrendered to the commissioner, and by him filed away; and he shall give to the purchaser two final certificates stating the whole amount of principal and the whole amount of interest paid; one of which certificates shall be forwarded to the Auditor of State; and on presentation of the other to the Auditor of State, if in all things correct, he shall countersign the same, which shall entitle the owner to a patent, to be issued by the Governor for the land so paid for.

Lands may be leased.

SEC. 57. Such commissioners may, from time to time, lease any such unsold improved land for terms not exceeding

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one year, until the same can be sold; and such leases shall be guarded against trespass and waste by proper covenants.

Commissioners to report to board annually.

SEC. 58. Such commissioners shall make an annual report to the board of trustees of the lands remaining unsold; such as are forfeited; such as are not fully paid for; the amount due; and money collected from sale, as interest or principal; which report shall be subscribed and sworn to by such commissioners, respectively, and be incorporated in the annual report of such board to the General Assembly.

Money to be paid by commissioner to treas. of board.

SEC. 59. Money collected by such commissioners shall be paid over to the treasurer of the board, who shall execute to such commissioner two receipts therefor, each specifying the persons from whom such money was collected, and the amount thereof, whether for interest or principal; one of which receipts shall be immediately forwarded to the Auditor of State to be by him used in his settlement with such treasurer.

Compensation of commissioners.

SEC. 60. Such board shall regulate the compensation of such commissioners.

Patents for land.

SEC. 61. Patents for lands sold shall be made by the Governor, and recorded in the office of the Secretary of State.

CHAPTER 115.

AN ACT touching Vacancies in Office, and filling the same by Appointment.

[APPROVED MAY 13, 1852.]

President of the Senate to act in case of a vacancy in offices of Gov. and Lieut. Governor.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, If in case of removal from office, death, resignation, or inability of both Governor and Lieutenant Governor, a vacancy occur in the office of Governor, the President of the Senate shall act as Governor until the vacancy be filled, and if there be no President of the Senate, the Secretary of State shall convene the Senate for the purpose of electing a President thereof.

Governor to fill vacancy in a circuit or district office.

SEC. 2. Whenever any vacancy occurs in any circuit or district office, commissioned by the Governor, he may fill such vacancy until filled by a qualified successor.

Judge of com. pleas to fill vacancy in office of county com.

SEC. 3. In case a vacancy occurs in the office of county commissioner, such vacancy may be filled by an eligible person, to be appointed by the judge of the court of common pleas of such county.

County coms. to fill other vacancies.

SEC. 4. The board of county commissioners shall fill all other vacancies in county or township offices, except justices of the peace, and such township or other offices the vacancies

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in which are otherwise provided for, and such appointment shall expire when a successor is elected and qualified, who shall be elected at the next general or township election, as the case may be, proper to elect such officers.

Pending an election, how filled.

SEC. 5. A vacancy occurring pending a contested election, shall be filled as other vacancies, until such contest is decided or the office otherwise filled.

Rights and duties of an appointee.

SEC. 6. A person temporarily filling a vacancy, shall give such bond, take such oath, have the same rights, and perform the same duties as the officer whose place he fills.

Term.

SEC. 7. Every person elected to fill any office in which a vacancy has occurred, shall hold such office for the unexpired term thereof.

CHAPTER 116.

AN ACT to authorize the formation of Voluntary Associations.

[APPROVED MAY 13, 1852.]

For what objects persons may associate.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any persons may voluntarily associate themselves together for either of the following purposes:

First. To establish and maintain horticultural, literary and scientific associations.

Second. To organize military and fire companies.

Third. To provide suitable grounds for the burial of the dead, for the public walks or commons, and to ornament the same with shade trees and shrubbery.

Fourth. To plant, cultivate and preserve shade trees in the public squares and along the streets of towns.

Fifth. To organize Masonic and Odd Fellows' lodges, subordinate to their several grand lodges, and also divisions of the Sons and Daughters of Temperance, and other charitable associations and orders.

Sixth. To erect and maintain suitable buildings for public meetings.

Association, how formed.

SEC. 2. Every such association shall be formed by written articles, specifying the objects of the same, the conditions of membership, and shall be subscribed by each member thereof.

May have corporate name and seal.

SEC. 3. Any such association may adopt a corporate name, either in the original articles or at the first meeting thereof, and may have a corporate seal.

Articles to be filed.

SEC. 4. Every such association shall file their articles aforesaid, in the office of the clerk of the circuit court of the proper county and pay the expenses therefor, and such association shall be deemed and held as a corporation.

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Income not to exceed $5,000.

SEC. 5. The annual value of the income of the property of any such corporation shall not exceed five thousand dollars.

Division of stock.

SEC. 6. Such corporation shall divide their stock or corporate property into shares, not exceeding thirty dollars each, and determine the manner in which the same shall be holden and conveyed.

Clerk to record proceedings.

SEC. 7. The clerk or secretary of every such corporation shall keep a fair record of the proceedings thereof, in a book provided for that purpose; and such records or copies duly attested by such clerk or secretary, may be read in evidence where the interests of such corporation are concerned.

CHAPTER 117.

AN ACT for the regulation of Weights and Measures.

[APPROVED JUNE 9, 1852.]

County board shall procure weights and measures.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the several boards of county commissioners within this State be, and they are hereby authorized and required to procure for their respective counties, and at the expense of the same, a set of the following measures and weights for the use of their county; that is, one measure of one foot or twelve inches English measure, so called; also one measure of three feet or thirty-six inches, as aforesaid; also, one half bushel measure for dry measure, which shall contain one thousand and seventy-five and one-fifth solid inches; also one gallon measure, which shall contain two hundred and thirty-one solid inches; which measures are to be of wood or any metal the court may think proper, also, one set of weights commonly called avoirdupois weights, and sealed with the name or initial letters of the county inscribed thereon; which weights and measures shall be kept by the county auditor of each and every county in this State for the purpose of trying and sealing the weights and measures used in their counties.

Notice, and duty of auditor.

SEC. 2. As soon as the several boards of county commissioners shall have furnished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court-house door for one month, and any person or persons desirous of having his, her, or their weights and measures tried by the county standard, shall apply to the county auditor, of the county in which he shall live, and if they correspond with the standard, the county auditor shall seal them with the seal provided for that purpose.

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SEC. 3. Sixty pounds of merchantable wheat, (avoirdupois weight) shall be given and taken for a standard bushel; of shelled corn fifty-six pounds; of corn on the cob sixty-eight pounds; of buck-wheat fifty pounds; of beans sixty pounds; of potatoes sixty pounds; of clover seed sixty pounds; hemp seed forty-four pounds; blue grass seed fourteen pounds; castor beans, forty-six pounds; dried peaches, thirty-three pounds; dried apples, twenty-five pounds; onions, fifty-seven pounds; salt, fifty pounds; mineral coal, seventy pounds; timothy seed forty-five pounds. Weight of bushel of sundry articles.

SEC. 4. All the different kinds of grain, seeds and articles specified in the third section of this act, shall hereafter be given and taken at the several weights affixed to each, as a standard bushel; and as such shall be considered a legal tender to fulfil any contract heretofore made for the delivery of either of the kinds of grain, seeds or articles specified in this act. Such standard to be legal tender.

CHAPTER 118.

AN ACT to encourage the destruction of Wolves.

[APPROVED JUNE 9, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the commissioners of each county may cause to be paid out of the county treasury a sum not exceeding five dollars, to any person who shall exhibit to them a wolf scalp, and take and subscribe an oath, that the wolf to which such scalp belonged was killed in the county, and that no reward therefor has been paid him out of such treasury; but no more than one dollar and fifty cents shall be paid for the killing of any wolf under the age of six months; and such commissioners shall cause all such scalps thus exhibited to them to be immediately destroyed. Premium paid for scalps.

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CHAPTER 119.

AN ACT to provide for electing Electors for President and Vice President of the United States.*

[APPROVED MAY 20, 1852.]

Time of election.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the qualified electors of the State shall, on Tuesday following the first Monday in November, in the year one thousand eight hundred and fifty-two, and on Tuesday following the first Monday in November in every fourth year thereafter, elect electors of President and Vice President of the United States, which election shall in all respects, be governed by the law regulating general elections.

Notice, how and by whom given.

SEC. 2. The sheriff of each county shall give notice of the time of holding such elections, together with the number of electors to be elected, by publishing the same in some newspaper within the county, or by written or printed notices to be set up at the usual places of holding elections in the respective townships, at least twenty days preceding the time of holding such elections.

Certificate.

SEC. 3. The board of judges in the several townships or precincts shall make out a certificate, under their hands, certifying in words the number of votes that each person received for elector, and the same shall be attested by the clerks of said election; sealed in the presence of such judges, and put into the hands of one of the judges, who shall on the ensuing Thursday, deliver the same to the clerk of the circuit court, or in his absence to his deputy, and in their absence to the sheriff, who shall in the presence of such judges in attendance, between the hours of twelve and six, of said day, compare the different returns, and make out in words a certificate of the number of votes each candidate for elector received in the county, which certificate shall be signed by the clerk, deputy, or sheriff officiating, and be sealed with the seal of the circuit court of the county, and delivered by such clerk, deputy or sheriff to the marshal appointed to convey the same to the seat of government.

Districts.

SEC. 4. Each congressional district shall compose one return district, and shall be numbered as the districts are numbered when the votes are taken.

Marshal.

SEC. 5. The Governor shall, before the first day of October, in each year, in which such election is to be held, appoint some citizen in each district as marshal, who shall hold his office until the duties required of him by this act are performed.

* This and the following act, having been published by the direction of the General Assembly of 1851-2, in pamphlet form, were inadvertantly omitted in the Session Acts, and are, therefore, inserted here out of the usual and the adopted order of publication of the R. S.

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Affidavit of marshal.

SEC. 6. Each marshal, before the first Monday in November following, shall make an affidavit on the back of his appointment that he will, without fraud or delay, perform the duties required of him by this act.

Deputy marshal.

SEC. 7. Such marshals may appoint deputies who shall make the same affidavit on the back of their appointment as is required of marshals; and vacancies occurring in the office of marshal by removal from the State or otherwise, shall be filled by the judge of the circuit court of the county in which such marshal resided.

Duties of Marshal.

SEC. 8. Marshals or their deputies shall visit the county seats of each county in his district, receive the returns thereof, from the clerks, deputies or sheriffs officiating, and deliver the same on the fourth Monday in November following, between the hours of nine and eleven of said day, to the Secretary of State, who, in presence of the Governor, and all the marshals in attendance, between the hours of twelve and six o'clock on said day, shall compare such certificates and read aloud the number of votes each person has received, and make out an abstract of the persons voted for, and the number in words, of votes given to each, and the Governor shall forthwith make out and transmit by mail to the persons having the highest number of votes, certificates of their election; but if more than the number of persons to be elected, have the greatest and an equal number of votes, then the election of those having an equal number of votes shall be determined by lot, drawn by the Secretary of State in the presence of the Governor and marshals.

When and where to assemble, and filling vacancies.

SEC. 9. Such electors shall assemble in the chamber of the House of Representatives, on the first Monday in December, or such other day as may be fixed by Congress, to elect such President and Vice President, at the hour of ten o'clock, A. M., and the Governor shall then and there deliver to the electors present a certificate of the names of all the electors; and if any elector fail to appear before eleven in the morning of said day, the electors present shall by ballot, by a majority of all present, fill such vacancy; which election shall be forthwith certified by a majority of the electors, to the Governor, who shall immediately notify such person of his election.

The vote.

SEC. 10. Such electors when so assembled, and such vacancies are so filled, shall then and there proceed to vote by ballot for President and Vice President of the United States, and perform the duties required by the constitution and laws of the United States.

Compensation.

SEC. 11. The compensation of such electors and marshals shall be audited by the Auditor of State, and paid by the State Treasurer, out of any moneys not otherwise appropriated, as follows, to-wit: such electors as attend shall receive the same per diem and mileage, as members of the General Assembly; such marshals shall be allowed ten cents

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for every mile they shall travel in collecting said returns, and in going to and from the seat of government: to be computed by the nearest and most usual route from county seat to county seat, and to the seat of government to and from the county seat of the county in which he resides.

NATURALIZATION.

(See "Gordon's Digest of the Laws of the United States," page 270, &c., articles 1631 to 1648 inclusive.)

ARTICLE 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:*

ART. 2. *First:* That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (*a*) two (*b*) years at least, before his admission, that it was bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof such alien may, at the time, be a citizen or subject.(*c*)

ART. 3. From this condition are exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same.(*d*)

ART. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to a citizen thereof, may, after he arrives at the age of twenty-one years, after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is an addition (article 2) three years previous to his admission: But, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.(*e*)

ART. 5. When any alien, who shall have complied with the conditions specified in article No. 2, and who shall have pursued the directions prescribed in article No. 9, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.(*f*)

ART. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceeding shall be recorded by the clerk of the court.(*g*)

ART. 7. The court admitting such alien, shall be satisfied that he has resided

*The declaration of an alien of his intention to become a citizen of the U. S., stated that it was *bona fide* his intention to become a citizen of the U. S., and to renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state and sovereignty whatever, and particularly to the queen of *Great Britain* and *Ireland*, according to the several acts of congress in such cases made and provided. *Held*, that the declaration was not objectionable because the name of the queen was not stated.—*Ex parte Smith*, 3 Blackf. 395.

(*a*) Act May 26th, 1824, sec. 3.
(*b*) Ibid, 26th, 1824, sec. 4.
(*c*) Act April, 1802.
(*d*) Act March 26th, 1804, sec. 1.
(*e*) Act May 26th, 1824, sec. 1.
(*f*) Act March 26th, 1804, sec. 2.
(*g*) Act 15th April, 1802, sec. 1, con. 2.

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within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States; and well disposed to the good order and happiness of the same: The oath of the applicant shall, in no case, be allowed to prove his residence.(*a*.)

ART. 8. In case the alien applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, that no alien, who shall be a native citizen, denizen, or subject, of any country, state, or sovereignty, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States.(*b*.)

ART. 9. In addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the fourteenth of April, 1802, shall, in order to become citizens of the United States, make registry and obtain certificates in the following manner, to-wit: Every person desirous of being naturalized, shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular state; and such report shall ascertain the name, birth place, age, nation, and allegiance, of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate, under his hand and seal of office, of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for each certificate, granted pursuant to this act, to an individual or family, fifty cents; and such certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.(*c*.)

ART. 10. The certificate of report and registry, required as evidence of the time of arrival in the United States, according to article No. 9, and also a certificate from the proper clerk or prothonotary, of the declaration of intention, made before a court of record, and required by article No. 2, shall be exhibited by every alien on his application to be admitted a citizen of the United States, who shall have arrived within the limits, and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length, in the record of the court, admitting such alien; otherwise he shall not be deemed to have complied with the conditions requisite for becoming a citizen of the United States; and any pretended admission of an alien, who shall have arrived within the limits and under the jurisdiction of the United States, since the said eighteenth day of June, one thousand eight hundred and twelve, to be a citizen after the promulgation of this act, without such recital of each certificate at full length, shall be of no validity or effect under the act aforesaid. But no certificate of citizenship or of naturalization obtained before May the twenty-sixth, 1824, from any court of record within the United States, shall be deemed invalid in consequence of any omission to comply with the requisitions of the foregoing article (*d*.)

ART. 11. Nothing in the foregoing article 10 contained, shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to article No. 3. Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdic-

(*a*) Act 18th April, 1802, sec. 1, con. 3.
(*b*) Ibid. Con. 4.
(*c*) Act 14th April, 1802, sec. 2.
(*d*) Act March 22d, 1816, sec. 1.—Act May 26th, 1824.

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tion of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens in the record of the court admitting the applicant: otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (*a*.)

ART. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen without the consent of the legislature of the state in which such person was proscribed. (*b*.)

ART. 13. Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States. (*c*.)

ART. 14. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceeding, required in this proviso to be performed in the court, shall be recorded by the clerk thereof. (*d*.)

ART. 15. Every court of record, in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges as if he had been naturalized in a district or circuit court of the United States. (*e*.)

ART. 16. No person who shall arrive in the United States after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States. (*f*.)

ART. 17. The oath of naturalization, when taken, confers the rights of a citizen. It is not necessary that there should be an order of court admitting the

(*a*) Act 22d March, 1816, sec. 2.
(*b*) Campbell v. Gordon, 6 Cr. 76.—Act 14th April, 1802, sec. 4.
(*c*) Campbell v. Gordon al. 6 Cr. 4 cl. 2.
(*d*) Act April 14, 1802, sec. 1 con.
(*e*) Act April 14, 1802, sec. 3.
(*f*) Act March 3d, 1813, sec. 12.

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alien to become a citizen.(a) Nor that it should appear by the record of naturalization that all the requisites presented by law for the admission of aliens, have been complied with.(b)

ART. 18. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.(c)

(a) Campbell v. Gordon et al., 6 Cr. 176.
(b) Stark v. Chesapeake Insurance Company, 7 Cr. 520.
(c) Con. art. 4, sec. 2.

CHAPTER 120.

AN ACT to divide the State into Congressional Districts.

[APPROVED FEBRUARY 9, 1852.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the State shall be divided into eleven districts for the election of Representatives in the Congress of the United States, each of which districts shall be entitled to elect one Representative. No. of districts.

SEC. 2. The limits and designation of each district shall be as follows:

SEC. 3. The counties of Posey, Vanderburg, Warrick, Spencer, Dubois, Pike, Gibson, Knox, Daviess and Martin shall constitute the first district. 1st District.

SEC. 4. The counties of Perry, Crawford, Orange, Washton, Harrison, Floyd, Clark and Scott shall constitute the second district. 2d District.

SEC. 5. The counties of Lawrence, Monroe, Brown, Bartholomew, Jackson, Jennings, Jefferson and Switzerland shall constitute the third district. 3d District.

SEC. 6. The counties of Ohio, Dearborn, Ripley, Franklin, Decatur and Rush shall constitute the fourth district. 4th District.

SEC. 7. The counties of Union, Fayette, Wayne, Randolph, Delaware and Henry shall constitute the fifth district. 5th District.

SEC. 8. The counties of Shelby, Johnson, Morgan, Hancock, Hendricks and Marion shall constitute the sixth district. 6th District.

SEC. 9. The counties of Sullivan, Greene, Owen, Clay, Vigo, Vermillion, Parke and Putnam shall constitute the seventh district. 7th District.

SEC. 10. The counties of Montgomery, Boone, Clinton, Tippecanoe, Fountain, Warren and Carroll shall constitute the eighth district. 8th District.

SEC. 11. The counties of Miami, Cass, Fulton, Marshall, St. Joseph, Laporte, Starke, Pulaski, Jasper, Porter, Lake, Benton and White, shall constitute the ninth district. 9th District.

SEC. 12. The counties of Elkhart, Kosciusko, Whitley, 10th District.

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Noble, Lagrange, Steuben, DeKalb and Allen shall constitute the tenth district.

11th District. SEC. 13. The counties of Wabash, Huntington, Wells, Adams, Jay, Blackford, Grant, Madison, Hamilton, Tipton and Howard shall constitute the eleventh district.

SEC. 14. This act shall be in force from and after its publication as prescribed by the constitution.

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APPENDIX.

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ACTS

OF THE LEGISLATURE OF VIRGINIA

CONCERNING CLARKE'S GRANT.*

AN ACT for surveying and appropriating the lands granted to the Illinois regiment, and establishing a town within the said grant.

[PASSED, 1783.]

SECTION 1. For locating and surveying the one hundred and fifty thousand acres of land granted by a resolution of Assembly to colonel George Rogers Clarke, and the officers and soldiers who assisted in the reduction of the British posts in the Illinois; *Be it enacted by the General Assembly*, That William Fleming, John Edwards, John Campbell, Walker Daniel, gentlemen, and George Rogers Clark, John Montgomery, Abraham Chaplin, John Bailey, Robert Todd, and William Clarke, officers in the Illinois regiment, shall be and they are hereby constituted a board of commissioners; and that they, or the major part of them, shall settle and determine the claims to the land under the said resolution. That the respective claimants shall give in their claims to the said commissioners on or before the first day of April, one thousand seven hundred and eighty-four; and, if approved and allowed, shall pay down to the said commissioners one dollar for every hundred acres of such claim, to enable them to survey and apportion the said lands. The said commissioners shall appoint a principal surveyor, who shall have power to appoint his deputies, to be approved by the said commissioners, and to contract with him for his fees. That from and after the said first day of April, one

* These lands are situated chiefly in Clark county, Indiana.

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thousand seven hundred and eighty-four, the said commissioners, or the major part of them, shall proceed with the surveyor to lay off the said one hundred and fifty thousand acres of land on the north-west side of the Ohio river, the length of which shall not exceed double the breadth; and, after laying out one thousand acres at the most convenient place therein for a town, shall proceed to lay out and survey the residue, and divide the same by fair and equal lot among the claimants; but no lot or survey shall exceed five hundred acres. That the said commissioners in their apportionments of the said land, shall govern themselves by the allowances made by law to the officers and soldiers of the continental army. That the said commissioners shall, as soon as may be, after the said one hundred and forty-nine thousand acres shall be surveyed, cause a plat thereof, certified on oath, to be returned to the register's office, and thereupon a patent shall issue to the said commissioners or the survivors of them, who shall hold the same in trust for the respective claimants, and they or the major part of them, shall thereafter, upon application, execute good and sufficient deeds for conveying the several portions of land to the said officers and soldiers.

Sec. 2. *And be it further enacted*, That a plat of the said one thousand acres of land laid off for a town, shall be returned by the surveyor to the court of the county of Jefferson, to be by the clerk thereof recorded; and thereupon, the same shall be and is hereby vested in William Fleming, John Edwards, John Campbell, Walker Daniel, George Rogers Clarke, John Montgomery, Abraham Chaplin, John Bailey, Robert Todd and William Clarke, gentlemen, trustees, to be by them, or any five of them, laid off into lots of half an acre each, with convenient streets, and public lots, which shall be and the same is hereby established a town by the name of Clarksville. That after the said lands shall be laid off into lots and streets, the said trustees, or any five of them, shall proceed to sell the same, or so many as they shall judge expedient, at public auction, for the best price that can be had, the time and place of sale being previously advertised two months at the court houses of the adjacent counties; the purchasers respectively to hold their said lots, subject to the condition of building on each, a dwelling house twenty feet by eighteen at least, with a brick or stone chimney, to be finished within three years from the day of sale; and

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the said trustees, or any five of them, are hereby empowered to convey the said lots to the purchasers thereof in fee-simple, subject to the condition aforesaid; and the money arising from such sale, shall be applied by the said trustees in such manner as they may judge most beneficial for the inhabitants of the said town; that the said trustees, or the major part of them, shall have power, from time to time, to settle and determine all disputes concerning the bounds of said lots, and to settle such rules and orders for the regular building thereon as to them shall seem best and most convenient; and, in case of the death, removal out of the county, or other legal disability, of any of the said trustees, the remaining trustees shall supply such vacancies by electing others, from time to time, who shall be vested with the same powers as those particularly nominated in this act. The purchaser of the said lots, so soon as they shall have saved the same according to their respective deeds of conveyance, shall have and enjoy all the rights and privileges, and immunities, which the freeholders and inhabitants of other towns in this State, not incorporated, hold and enjoy. If the purchaser of any lot shall fail to build thereon within the time before limited, the said trustees, or a major part of them, may thereupon enter into such lot, and may either sell the same again, and apply the money towards repairing the streets, or in any other way for the benefit of the said town, or appropriate such lot to the public use of the inhabitants of the said town. [2 Va. R. C. 405.]

AN ACT to amend the act entitled "an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant."

[PASSED, 1786.]

SECTION 1. *Be it enacted by the General Assembly*, That James Francis Moore, Alexander Brackenridge, Robert Brackenridge, Richard Taylor, Andrew Heth, Richard Terrell, and William Croghan, gentlemen, shall be and they are hereby constituted commissioners, in addition to those appointed by an act entitled "an act for surveying and apportioning the lands granted to the Illinois regiment, and

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establishing a town within the said grant." The said board of commissioners, or any seven of them, shall have power, and are hereby authorized to settle and determine all claims to land under the act heretofore received, as well as all such as shall be exhibited to them before the first day of January, one thousand seven hundred and eighty-eight, and to approve and allow or reject the same, as to them shall seem just and right. The register of the land office shall immediately, after the passing of this act, issue a patent to the said commissioners for the lands contained in the said grant, without demanding a fee for the same. The commissioners shall demand and receive from every person who shall be allowed a portion of the said land before they shall execute a deed, his respective proportion of the fees payable to the register of the land office for the original grant; and if any person shall fail to make application to the commissioners for a deed, and pay such proportion as aforesaid, within eighteen months after the passing of this act, his right to the lands allowed him shall be forfeited.

SEC. 2. *Provided always, and it is further enacted*, That the said commissioners, or a majority of them, shall have power to extend the time herein fixed for each claimant to pay his proportion of the original grant to the first day of September, one thousand seven hundred and eighty-nine, and no longer. [Id. 429.]

AN ACT giving further time to the commissioners appointed for surveying and apportioning the lands granted to the Illinois regiment, to execute deeds for the same.

[PASSED, 1790.]

WHEREAS, The powers given to the commissioners appointed by two acts of Assembly, the one entitled "an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant," and the other amendatory thereof, have lately expired, and application hath been made to this Assembly for a partial continuance of such powers, inasmuch as that the said commissioners may continue to execute

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deeds for all claims which have been heretofore settled and determined by them:

SECTION 1. *Be it therefore enacted by the General Assembly*, That the said commissioners, or any three of them, shall be and they are hereby authorized and empowered, upon application made to them for that purpose, to continue to grant deeds to the respective claimants, entitled to portions of land under the said acts of Assembly, whose titles thereto have been heretofore settled and determined, in the same manner, and upon the same conditions, as prescribed by the said recited acts: *Provided nevertheless, and be it further enacted*, That the said commissioners shall not continue to execute such deeds after the first day of June, one thousand seven hundred and ninety-two: and that if any person shall fail within that period to make application to the commissioners for a deed, and pay the legal fees therefor, his right to the land allowed him shall be forfeited. [Id. 439.]

AN ACT giving further time to the commissioners appointed for surveying and apportioning the lands granted to the Illinois regiment, to execute deeds for the same.

[PASSED, 1796.]

SECTION 1. *Be it enacted by the General Assembly*, That the commissioners or any three of them named in, and appointed by, two several acts of Assembly, one whereof passed in the year one thousand seven hundred and eighty-three, entitled "an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant," the other passed in the year one thousand seven hundred and eighty-six, entitled "an act to amend the act entitled an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant," be and they are hereby authorized and empowered, upon application to them made for that purpose, to execute deeds to the respective claimants entitled to portions of land under the said acts of Assembly, whose titles thereto have been heretofore or may hereafter be settled and determined by the said commissioners.

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SEC. 2. The said commissioners in ascertaining such titles hereafter, shall be influenced and directed by the same opinions and principles which governed them in their proceedings under the above recited acts. Every person entitled to and applying for a deed or deeds, by virtue of this act, shall, before obtaining the same, pay to the commissioners such legal fees accruing thereon, as have heretofore been exacted by them in such cases.

SEC. 3. This act shall be in force from the passing thereof. [Id. 466.]

AN ACT supplemental to the act entitled "an act giving further time to the commissioners appointed for surveying and apportioning the lands granted to the Illinois regiment, to execute deeds for the same.

[PASSED, 1796.]

SECTION 1. *Be it enacted*, That the commissioners mentioned in the act entitled "an act giving further time to the commissioners appointed for surveying and apportioning the lands granted to the Illinois regiment, to execute deeds for the same," which passed during the present session of Assembly, shall be and they are hereby empowered to appoint, from time to time, a surveyor or surveyors, for the purpose of carrying the said recited act into execution.

SEC. 2. This act shall be in force from the passing thereof. [Id. 468.]

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PATENT

BY THE GOVERNOR OF VIRGINIA,

FOR CLARKE'S GRANT.

EDMUND RANDOLPH, Esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that by virtue of an act of Assembly, passed in the October session, one thousand seven hundred and eighty-three, entitled "an act for surveying the lands granted to the Illinois regiment, and establishing a town within the said grant," there is granted by the said commonwealth unto William Fleming, John Edwards, John Campbell, George Rogers Clarke, John Montgomery, Abraham Chaplin, John Bailey, Robert Todd, William Clarke, James Francis Moore, Alexander Brackenridge, Robert Brackenridge, Richard Taylor, Andrew Heth, Richard Terrell, and William Croghan, as a board of commissioners to and for the uses and purposes expressed in the said act, a certain tract or parcel of land containing one hundred and forty-nine thousand acres, lying and being on the northwest side of the Ohio river, and bounded as followeth, to-wit: Beginning at a white oak, blue ash, and hickory, nearly opposite the upper point of the Eighteen mile island on the bank of the river, running N. 40 d. W. 4652 poles, crossing Fourteen-mile creek three times and sundry branches to a black gum, white oak, and sugar tree; thence S. 50 d. W. 1006 poles to three white oaks; thence S. 40 d. E. 300 poles to three white oaks; thence S. 50 d. W. 1866 poles to two black oaks and a Spanish oak near the Knobs; thence S. 40 d. E. 300 poles to a poplar, white oak, and dogwood; thence S. 50. d. W. 533 poles to three white oaks on the point of a ridge; thence S. 40 d. E. 600 poles to a poplar, beech, and ash; thence S. 50 d. W. 533 poles to three white oaks

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and dogwood sapling; thence S. 40. d. E. 1200 poles, crossing the Muddy fork of Silver creek three times, to a white oak and two dogwood saplings; thence S. 2 d. W. 2840 poles to two elms and a beech, on the bank of Falling run; thence S. 40 d. E. crossing said run 320 poles to the Ohio, a poplar, and two beeches; thence up the river as it meanders 340 poles to a small white thorn, white oak, and hickory, near the mouth of Silver creek, and corner to the one thousand acres laid off agreeably to the aforesaid act for a town; thence with the line thereof N. 170 poles, crossing Silver creek twice, to a sweet gum, beech and sugar tree; thence E. 326 poles, crossing the creek, to three beeches; thence S. 40 d. E. 86 poles to a beech and sugar tree; thence E. 176 poles to a large sweet gum, dogwood, and sugar tree; thence S. 180 poles to a sugar and two white ash trees; thence E. 158 poles to three beeches; thence S. 280 poles to two white ashes and hickory on the Ohio; thence up the same with its meanders to the beginning, with its appurtenances: To have and to hold the said tract or parcel of land with its appurtenances to the said William Fleming, John Edwards, John Campbell, George Rogers Clarke, John Montgomery, Abraham Chaplin, John Bailey, Robert Todd, William Clarke, James Francis Moore, Alexander Brackenridge, Robert Brackenridge, Richard Taylor, Andrew Heth, Richard Terrell, and William Croghan, to them and their heirs forever, for the uses and purposes above mentioned.

In witness whereof the said Edmund Randolph, Esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond, on the fourteenth day of December, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the eleventh.

(L. S.) EDMUND RANDOLPH.

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FUGITIVE SLAVE LAW.

AN ACT to amend, and supplementary to, the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February 12, 1793.

[APPROVED SEPTEMBER 18, 1850.]

Commissioners.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the persons who have been, or may hereafter be, appointed commissioners, in virtue of any act of Congress, by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace, or other magistrate of any of the United States may exercise in respect to offenders for any crime or offense against the United States, by arresting, imprisoning, or bailing the same under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," shall be, and are hereby, authorized and required to exercise and discharge all the powers and duties conferred by this act.

To be appointed by the superior court of each territory.

SEC. 2. *And be it further enacted*, That the superior court of each organized territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the circuit court of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized territory of the United States, shall possess all the powers, and exercise all the duties conferred by law upon the commissioners appointed by the circuit courts of the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

Powers and duties.

Courts authorized to enlarge the number of commissioners.

SEC. 3. *And be it further enacted*, That the circuit courts of the United States, and the superior courts of each organized territory of the United States, shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

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Jurisdiction of commissioners concurrent with that of judges, and shall grant certificates to take fugitives from service.

SEC. 4. *And be it further enacted*, That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit and district courts of the United States, in their respective circuits and districts within the several States, and the judges of the superior courts of the territories, severally and collectively, in term time, and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or territory from which such person may have escaped or fled.

Duty of marshals and deputies.

SEC. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars to the use of such claimant, on the motion of such claimant, by the circuit or district court for the district of such marshal, and after arrest of such fugitive by such marshal or his deputy, or whilst at any time in his custody under the provisions under this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable on his official bond to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, territory, or district whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county, when necessary to insure a faithful observance of the clause of the constitution referred to, in conformity with the provisions of this act; and all good citi-

Penalty for refusing to execute the same.

Liable for value of a fugitive escaping after his arrest.

Commissioners authorized to appoint persons to execute warrants issued by them.

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zens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid for that purpose, and said warrants shall run, and be executed by said officers anywhere in the State within which they are issued.

Citizens to render aid.

SEC. 6. *And be it further enacted*, That when a person held to service or labor in any State or territory of the United States, has heretofore or shall hereafter escape into another State or territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal officer or court of the State or territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath, and take depositions under the laws of the State or territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or territory

Fugitives from service may be reclaimed for the owner or authorized agent, by warrant of court, judge, or commissioner for apprehension.

Duties of court, judge, or commissioner in cases of trial.

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in which such service or labor was due, to the State or territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act, shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate or other person whomsoever.

Testimony of fugitive not admitted.

Any person knowingly hindering the arrest of a fugitive, or attempting to rescue one from custody, or aiding to escape, or harboring, shall be fined and imprisoned.

SEC. 7. *And be it further enacted*, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offenses,

Penalties.

be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which such offense may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized territories of the United States; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars, for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the district or

Additional damages.

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territorial courts aforesaid, within whose jurisdiction the said offense may have been committed.

Fees for services of marshals, deputies, &c.

SEC. 8. *And be it further enacted*, That the marshals, their deputies, and the clerks of the said district and territorial courts, shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid, in either case, by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest and take before any such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them: such as attending at the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner; and in general for performing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises, such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitives from service or labor be ordered to be delivered to such claimants by the final determination of such commissioners or not.

Commissioners' fees.

Fee for executing process.

Additional fees.

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When claimant or his agent apprehends a rescue, the officer making the arrest is to remove the fugitive to the State whence he fled. If necessary, to employ aid.

SEC. 9. *And be it further enacted*, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. The said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

Compensation of officer.

Evidence necessary to obtain arrest and delivery of fugitives.

SEC. 10. *And be it further enacted*, That when any person held to service or labor in any State or territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other State, territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is

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contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved, to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or territory from which he escaped: *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid. But in its absence the claim shall be heard and determined upon other satisfactory proofs, competent in law. Proviso.

DECISIONS OF COURTS TOUCHING THE FUGITIVE SLAVE LAW OF 1793.

On a question of slavery or freedom, the same rules of evidence prevail as in other cases concerning the right to property.—*Baldwin's C. C. R.* 577.

The constitution and laws of the United States do not confer, but secure this right to reclaim fugitives against State legislation.—*Ibid*, 579.

It is historically well known, that the object of the clause in the constitution of the U. S., relating to persons owing service and labor in one State escaping into other States, was to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves, as property, in every State in the Union into which they might escape from the State where they were held in servitude. The full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding States; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted that it constituted a fundamental article without the adoption of which the Union could not have been formed. Its true design was to guard against the doctrines and principles prevailing in the non-slaveholding States, by preventing them from intermeddling with, or obstructing or abolishing the rights of the owners of slaves.—*Prigg* vs. *The Commonwealth of Pennsylvania*, 16 Peters 539.

The owner of a fugitive slave has the same right to seize and take him in a State to which he has escaped or fled, that he had in the State from which he escaped; and it is well known that this right to seizure or recapture is universally acknowledged in all the slaveholding States. The court has not the slightest hesitation in holding, that under and in virtue of the constitution, the owner of the slave is clothed with the authority in every State of the Union, to seize and recapture his slave, wherever he can do it without any breach of the peace, or illegal violence. In this sense, and to this extent, this clause in the constitution may properly be said to execute itself, and to require no aid from legislation, State or national.—*Ibid.*

The constitution does not stop at a mere annunciation of the right of the owner to seize his absconding or fugitive slave, in a State to which he may have fled. If it had done so, it would have left the owner of the slave, in many cases, utterly without any adequate redress.—*Ibid.*

The constitution declares that the fugitive slave shall be delivered up on claim of the party to whom service or labor may be due. It is exceedingly difficult, if not impracticable, to read this language, and not to feel that it contemplated some further remedial redress than that which might be administered at the hand of the owner himself. A "claim" is to be made.—*Ibid.*

A "claim" in a just juridical sense, is a demand of some matter as of right, made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. It cannot well be doubted, that the constitution requires the delivery of the fugitive "on the claim" of the master; and the natural infer-

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ence certainly is, that the national government is clothed with the appropriate authority and functions to enforce it. The fundamental principle applicable to all cases of this sort would seem to be, that when the end is required the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted.—*Ibid.*

The clause relating to fugitive slaves is found in the national constitution, and not in that of any State. It might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the States are bound to provide means to carry into effect the duties of the national government, no where delegated or entrusted to them by the constitution. On the contrary, the natural, if not the necessary conclusion is, that the national government, in the absence of all positive provisions to the contrary, is bound through its own proper departments, legislative, executive, or judiciary, as the case may require, to carry into effect all the rights and duties imposed upon it by the constitution. —*Ibid.*

A claim to a fugitive slave is a controversy in a case "arising under the constitution of the United States," under the express delegation of judicial power given by that instrument. Congress, then, may call that power into activity, for the very purpose of giving effect to the right; and if so, then it may prescribe the mode and extent to which it should be applied, and how and under what circumstances the proceedings shall afford a complete protection and guarantee of the right.—*Ibid.*

The provisions of the sections of the act of Congress of 12th February, 1793, on the subject of fugitive slaves, as well as relative to fugitives from justice, cover both the subjects; not because they exhaust the remedies which may be applied by Congress to enforce the rights, if the provisions shall be found, in practice, not to attain the objects of the constitution, but because they point out all the modes of attaining those objects which Congress have as yet deemed expedient and proper. If this is so, it would seem, upon just principles of construction, that the legislation of Congress, if constitutional, must supersede all State legislation, upon the same subjects, and by necessary implication, prohibit it. For if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the State legislatures have a right to interfere. —*Ibid.*

The clause in the constitution of the United States, relating to fugitives from labor, manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no State law or regulation can in any way qualify, regulate, control or restrain. Any State law or regulation which interrupts, limits, delays or postpones the rights of the owner to the immediate command of his services or labor, operates, *pro tanto*, a discharge of the slave therefrom. The question can never be, how much is he discharged from, but whether he is discharged from any, by the natural or necessary operation of the State laws. The question is not one of quantity or degree, but of withholding or controlling the incidents of a positive right.—*Ibid.*

The constitutionality of the act of Congress relating to fugitives from labor, has been affirmed by the adjudications of the State tribunals, and by those of the courts of the U. S. If the question of the constitutionality of the law were one of doubtful construction, such long acquiescence in it, and such extensive and uniform recognitions would, in the judgment of the court, entitle the question to be considered at rest. Congress, the executive, and the judiciary, have upon various occasions acted upon this as a sound and reasonable doctrine. —Cited, *Stuart* vs. *Laird*, 1 Cranch 299; *Martin* vs. *Hunter*, 1 Wheat. 204; *Cohens* vs. *The Commonwealth of Virginia*, 6 Wheat. 264.—*Ibid.*

The rignt to seize and retake fugitive slaves, and the duty to deliver them up, in whatever State of the Union they may be found, is, under the constitution, recognized as an absolute, positive right and duty, pervading the whole Union with an equal and supreme force, uncontrolled and uncontrollable by State sovereignty or State legislation.—*Ibid.*

The act of the legislature of Pennsylvania, upon which the indictment against Edward Prigg, for carrying away a fugitive slave is founded, is unconstitutional and void. It purports to punish as a public offence against the State the very act of seizing and removing a slave by his master, which the constitution of the U. S. was designed to justify and uphold.—*Ibid.*

The power of legislation in relation to fugitives from labor rests exclusively in Congress, and the laws of this State prescribing the mode of arresting such fugitives escaping from other States, are unconstitutional.—*Graves* vs. *The State*, 1 Carter's Ind. Rep. 368.

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The constitution and act of 1793, in regard to the surrender of a fugitive from labor, are binding on the State of Indiana, and its citizens, the same as on the other States.—*Vaughan* vs. *Williams*, 3 McLean's Rep., 530.

The laws of Missouri sanctioning slavery, must be respected, and rights under them enforced, when a citizen of that State claims a fugitive.—*Ibid.*

An individual is liable to the penalty for a rescue, if he be present and encourage it.—*Ibid.*

An owner of slaves who takes them to Illinois, and keeps them at labor six months, and then removes them to Missouri, forfeits his right to them as slaves.—*Ibid.*

Where the agent of the claimant of fugitives from labor acts under a written power of attorney, in a suit for hindering an arrest, under the act of Congress, the power must be given in evidence, or if it be lost, the contents must be proved.—*Driskill* vs. *Parrish*, 3 McLean's Rep., 631.

No one incurs the penalty under the act, for obstructing the arrest, who does not act knowingly.—*Ibid.*

He must have notice that the persons are fugitives, and that the agent has power to arrest them.—*Ibid.*

The power of attorney is in the nature of process.—*Ibid.*

Whether the agent makes the arrest, with the view of taking the fugitives before a judicial officer, or to take them out of the State, the principle is the same.—*Ibid.*

No one incurs the penalty who resists an arrest by one without authority.—*Ibid.*

There is no general principle in the law of nations which requires a surrender of a fugitive slave.—*Jones* vs. *Vanzandt*, 2 McLean's C. C. R. 596.

The surrender must be required by compact.—*Ibid.*

Recaption, at common law, could not be made in a foreign sovereignty.—*Ibid.*

Damages for harboring or concealing a slave, in a free State, are recoverable only by virtue of the constitution and act of Congress.—*Ibid.*

Notice that the colored persons harbored or concealed are fugitives from labor, need not be in writing by the claimant or his agent, nor need it be given by either of them verbally.—*Ibid.*

Notice under the act of Congress means knowledge.—*Ibid.*

If there be evidence conducing to show such notice or knowledge, it must go to the jury who will judge of the sufficiency of it.—*Ibid.*

The same principle applies to the evidence of harboring or concealing the fugitive.—*Ibid.*

Any overt act which intentionally places a fugitive from labor beyond the reach of his master, or is calculated to have such an effect, is a harboring of the fugitive within the statute.—*Ibid.* 611.

If the defendant had full knowledge, from the negroes or otherwise, that they were fugitives from labor, it is notice under the statute.—*Ibid.*

If the plaintiff was subjected to the payment of a certain reward, by the laws of Kentucky, for the return of his slaves; and the defendant was the cause of his liability to such payment, it may constitute a part of the damages.—*Ibid.*

Where the defendant has been the means of the entire loss of a slave, evidence may be received of the value of such slave, by showing what his services were worth, and as conducing to show that fact for what sum he might have been sold.—*Ibid.*

The act of Congress on the subject of fugitive slaves is constitutional.—*Ibid.* 612.

It does not conflict with the ordinance of 1787.—*Ibid.*

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ACT OF CONGRESS

GRANTING SWAMP LANDS TO THE SEVERAL STATES.

PASSED SEPTEMBER 28, 1850.

AN ACT to enable the State of Arkansas and other States to reclaim the "Swamp Lands" within their limits.

[APPROVED SEPTEMBER 28, 1850.]

Swamp and overflowed lands unfit for cultivation granted to Arkansas.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby granted to said State.

Secretary of the Int. to make out list and plats of said land, and when requested, grant a patent vesting the same in the State of Arkansas.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas,

Proviso.

subject to the disposal of the legislature thereof: *Provided, however*, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

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when the greater part of a subdivision is unfit for cultivation, it shall be included in said plats: if the greater part be not of that character, it shall be excluded.

SEC. 3. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

Provisions of this act extended to other States possessing such lands.

SEC. 4. *And be it further enacted*, That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known as designated as aforesaid, may be situated.

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ERRATA.

The following errata in vol. 1, are not noticed in the certificate of the Secretary of State. Some are found in the acts themselves, others concern only the arrangement:

On p. 116, sec. 49, 8th line, for "of" read "or."

On p. 199, sec. 6, 2d line, for "to" read 'may."

On p. 201, sec. 3, 4th line, after "county," insert "such trustees."

On p. 225, sec. 6, 5th line, for "such" read "each."

On p. 237, sec. 30, 4th line, for "is" read "are."

On p. 237, the order of the marginal notes to secs. 27, 28, 29, 30, 31, and 32, is incorrectly changed.

On p. 241, sec. 10, 8th line, for "and" read "who."

On p. 249 the title of the case referred to is omitted. It should be *Clark et al.* vs. *Sprague et al.*, 5 Blackf. 412.

On p. 251, in marginal note to sec. 51, for "$250" read "$300."

On p. 295, sec. 2, 11th line, after "county," insert "may."

On p. 303, top paging, for "general fund," read "fund—general."

On p. 324, sec. 10, the word "mentioned" is the conclusion of a sentence, and should be so punctuated.

On p. 334, sec. 18, 5th line, for "same" read "sum."

On p. 335, sec. 25, 3d line, after "and" insert "value."

On p. 343, in note *Stutsman* vs. *Stutsman*, last line, for "on interest" read "no interest."

Chap. 56, on p. 342, should have preceded chap. 54, on p. 331.

Chap. 61, on p. 351, should have preceded chap. 59 on p. 348.

On p. 366, sec. 12, 4th line, after "township," insert "to be by him designated in such notice."

On p. 373, sec. 2, chap. 72, 3d line, for "is" read "are."

On p. 373, sec. 2, chap. 73, 6th line, after "board" insert "it;" and on p. 374, same sec., 2d line from the top, the words "said report" should be omitted.

On p. 377, sec. 5, 1st line, for "their" read "his."

On p. 388, note in case of *Macy* vs. *Hollingsworth*, 6th line, for "was" read "were."

On p. 389, near the bottom, for "remittur" read remittitur."

On p. 396, sec. 9, 1st line, for "on cases of any" read "in case of an."

On p. 400, sec. 23, 13th line, "and" should be omitted.

On p. 407, sec. 32, 4th line, the word "they" should be omitted.

On p. 425, sec. 1, 1st line, for "forty" read "four."

On p. 433, sec. 7, last line but one, "to receive" should follow after "person."

On p. 483, sec. 8, 3d line, after "and" insert "having."

On p. 491, sec. 51, 2d line, the words "or laid" should be omitted.

On p. 492, sec. 58, 2d line, for "impair" read "be impaired."

On p. 518, art. 4, 9th line, for "three" read "two."

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